United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

Docket No. 76-1250

IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

— against —

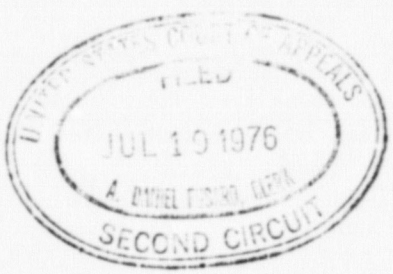
JOSEPH C. VISPI,

Defendant-Appellant.

Appeal From Orders and Judgment of the United States District Court for the Western District of New York

---

APPENDIX



OHLIN, DAMON, MOREY,
SAWYER & MOOT
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1800 Liberty Bank Building
Buffalo, New York 14202
Tel. No. (716) 856-5500
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RICHARD J. ARCARA, ESQ.
United States Attorney in and for
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RELEVANT DOCKET ENTRIES.

DATE		
1974		
February 1	(1)	Filed Information.
February 1	(2)	J.S. 2 made.
April 24	(3)	Filed Defendant's notice of motion for Discovery and Inspection; bill of particulars; Disclosure; and Brady material, etc., ret. 5/13/1974 - Rochester.
April 22	(4)	Arraignment. Defendant present with counsel, waives reading of the information and enters a plea of not guilty. Defendant is released on his own recognizance. Motion ret. 5/13/1974.
May 7	(5)	Filed Government's response to Defendant's Motion for discovery and inspection, etc.
May 13	(6)	Motion by Defendant for Discovery, Inspection, etc., to be submitted fifteen days from today.
August 14	(7)	Filed Government's notice of readiness for trial.
December 9	(8)	Filed Court Stenographer's minutes of proceedings of 4/22/74.
1975		
May 2	(9)	Filed Government's notice of motion and motion to set a date for trial for criminal trial calendar, ret. 5/12/75.
May 12	(10)	Filed Defendant's affidavit, notice of motion and motion to dismiss, ret. 5/12/75.
May 15	(11)	Filed Government's opposition to defendant's motion to dismiss Information.
May 12	(12)	Motion by Government to set date for trial. The Governement is ready. Motion by defendant to dismiss. To be submitted by Friday of this week. Trial date to be fixed after motion decided.
September 24	(13)	Filed Government's notice of motion, motion with affidavit of service, to set a date for trial for Criminal Trial Calendar, ret. 10/14/75 - Rochester.

RELEVANT DOCKET ENTRIES.

1975

October 14	(14)	Motion by Government to set date for trial. Defendant requests non-jury trial. Trial date 10-23-75.
October 20	(15)	Filed Decision and Order - Government to furnish defendant evidence favorable to the defendant under the authority of Brady vs. Maryland; names of witnesses, be furnished to defendant by the Government, on or before 10/21/75; Defendant's motion for a bill of particulars, other than the names of witnesses and for complete and specific disclosure of the use by the government confidential informants is denied; Defendant's motion to dismiss the information, etc., denied; Case will proceed to trial without a jury on 10/23/75 in the event of an adverse decision on defendant's motion at the oral argument on 10/14/75-- BURKE, J.
October 21	(16)	Filed four subpoenas - Joseph Enzina, Ethel Kinsella, William R. Brennan served 10/17/75; Joseph Coppola, served 10/18/75.
October 21	(17)	Filed sixteen subpoenas (D.T.) - Jerome D. Adner, William P. Bellas - Ferdinand J. Ciccarelli, Dennis J. Kane, Frank N. Cuomo, James A. Garvey, William G. Willis, Dimitri J. Tzetzo, Warren W. Rothfus, Joseph M. Ralabate, Victor E. Manz, Anthony LaMastra, Robert T. Kistner, Herbert W. Holtz, William S. Gordon, Wayne D. Wisbaum, served 10/17/1975.
October 23	(18)	Case is moved ready for trial without a jury. Trial is Adj. until tomorrow. Burke, J.
October 24	(19)	Trial is continued from yesterday. Decision reserved. Briefs to be submitted.
October 22	(20)	Filed subpoena to testify for Frederick M. Marshall served on 10-22-75.
October 23	(21)	Filed one subpoena D/T for Robert Ludwig served on 10-22-75.
October 28	(22)	Filed two subpoenas D/T for Michael Pasquarella and Dominick Pardi, both served 10-23-75.

RELEVANT DOCKET ENTRIES.

1975

December 16	(23)	Filed Court Stenographer's transcript of Trial - 1 Volume (Retained in Rochester) (finding the defendant guilty as charged in the Information)

1976

April 21	(24)	Filed Decision findings of fact and conclusion of law, Burke, J. sentence - 5/10/76 - Rochester
April 21	(25)	Filed notice of motion and motion to vacate the judgment and to dismiss the Information and in the alternative for a new trial.
April 26	(26)	Motion by defendant to vacate judgment, etc. Submitted for decision.
May 10	(27)	Defendant is sentenced on Cts. 1, 2 as follows: The Court: I impose a fine of $500 on each count; The defendant requests stay of the fine pending the filing of a notice of appeal. Granted.
May 17	(28)	Filed Court Reporter's transcript of proceedings on 4/26/76 (Filed in Rochester).
May 19	(29)	Filed Decision and order denying defendant's motion to vate the judgment and to dismiss the Information, and for alternative relief of a new trial -- BURKE, J.
May 19	(30)	Filed Court Stenographer's transcript of sentence proceedings of 5/10/76.
May 19	(31)	Filed Judgment for defendant.
May 13	(32)	Filed Defendant's Notice of Appeal with Form A.
May 20	(33)	Copy of Notice of Appeal, mailed to U.S. Attorney, Defendant, and to the CCA with Statement of Docket Entries and Form A.

INFORMATION – filed 2-1-74.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	CR-74- 14 CR.NO.
Plaintiff	
-vs-	INFORMATION
JOSEPH C. VISPI,	Vio.: T. 26, U.S.C., §7203
Defendant	

COUNT I

The United States Attorney charges:

That during the calendar year 1967, the defendant, JOSEPH C. VISPI, who was a resident of the Town of Amherst, State of New York, had and received a gross income of $48,638.70; that by reason of such income he was required by law, following the close of the calendar year 1967 and on or before April 15, 1968, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Buffalo, New York, at Buffalo, New York, in the Western Judicial District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code; 26 U.S.C., Section 7203.

INFORMATION — filed 2-1-74.

COUNT II

The United States Attorney further charges:

That during the calendar year 1968, the defendant, JOSEPH C. VISPI, who was a resident of the Town of Amherst, State of New York, had and received a gross income of $52,808.50; that by reason of such income he was required by law, following the close of the calendar year 1968 and on or before April 15, 1969, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Buffalo, New York, at Buffalo, New York, in the Western Judicial District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code; 26 U.S.C., Section 7203.

Dated: Buffalo, New York, January 31, 1974

John T. Elfvin

JOHN T. ELFVIN
United States Attorney

DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION, etc., filed 4-24-74.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

vs. NOTICE OF MOTION

JOSEPH C. VISPI, Cr. No. 74-44

Defendant.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of RICHARD E. MOOT, sworn to on the ~~2nd~~ 23rd day of April, 1974, and upon the Information and all the other proceedings had herein, the undersigned will move this Court on behalf of the defendant JOSEPH C. VISPI, at a Term of this Court to be held in the United States Courthouse in the City of Rochester, State of New York, on the ~~22nd~~ 13TH day of ~~April~~ MAY, 1974, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order granting the following relief:

1. Discovery and Inspection pursuant to Rule 16 of the Federal Rules of Criminal Procedure as more fully set forth in the attached affidavit;

2. A Bill of Particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure as itemized in the attached affidavit;

3. Delivery to the defendant of all evidence favorable to him pursuant to the authority of Brady v. Maryland, 373 U.S. 83;

4. Complete and specific disclosure of the use by the government of any and all confidential informants;

5. An order reserving to defendant, the right to file other and further motions, the need for which may become apparent upon the granting of any or all the relief herein sought.

Dated: Buffalo, New York
April 23, 1974

Yours, etc.

OHLIN, DAMON, MOREY, SAWYER & MOOT
Attorneys for Defendant
Joseph C. Vispi
1800 Liberty Bank Building
Buffalo, New York 14202
Telephone: (716) 856-5500

TO: DAVID G. LARIMER, ESQ.
Assistant United States Attorney
United States Courthouse
Rochester, New York 14614

DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION, etc., filed 4-24-74.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

vs.

JOSEPH C. VISPI,

Defendant.

AFFIDAVIT

Cr. No. 74-44

STATE OF NEW YORK)
) SS.:
CITY OF BUFFALO)

RICHARD E. MOOT, being duly sworn, says:

1. I am a member of the firm OHLIN, DAMON, MOREY, SAWYER & MOOT with offices at 1800 Liberty Bank Building, Buffalo, New York, and represent the defendant, JOSEPH C. VISPI.

2. On or about the 1st day of February, 1974, an Information was filed in the United States District Court for the Western District of New York charging Joseph C. Vispi, on two counts with willful failure to file an income tax return for the years 1967 and 1968 in violation of the Internal Revenue Code: Title 26 U.S.C., section 7203.

3. On the 22nd day of April, 1974, defendant Joseph C. Vispi is scheduled to be arraigned before the Hon. Harold P. Burke and will enter a plea of not guilty.

4. The remainder of this affidavit is divided into different subheadings relating to the specific relief sought.

A. Discovery and Inspection

5. Defendant requires an order permitting him to inspect and copy or photograph the following items hereinafter designated which are in the possession, custody or control of the government on the grounds that they are material to the preparation of his defense and that this request for them is reasonable.

(a) A copy of any and all statements allegedly made by the defendant to any governmental agency, agent, or employee, whether state or federal.

(b) All records, notes, summaries, reports, logs, memoranda, TWX communications, airtels and written communications of any type or description made by any employee, agent or agency of the government which relate to the above-referenced statements and concern all of the matters contained in this Information or related thereto.

(c) The defendant's income tax returns as filed for the years 1965 to 1972 showing the date on which each return was received by the Internal Revenue Service and all correspondence sent to and received from the defendant by any governmental employee, agent or agency which relates to said returns, their filing or the charges herein.

(d) All documents, papers and tangible objects which the government intends to introduce into evidence at the trial in its case in chief.

(e) The names of all persons known to the prosecution or in the exercise of due diligence should be known to the prosecution who have knowledge pertaining to this case or who were interviewed by the authorities in connection with the case.

(f) All statements, written and oral, of witnesses whom the prosecution interviewed but does not plan to call to testify at the trial of this case.

(g) In the event that there was any electronic surveillance conducted by the government or any other governmental agency or any state agency relating to any phase of the investigation of this case, the proceeds of that surveillance is requested including the contents of all such statements and conversations thus overheard, and all memoranda prepared in connection therewith.

B. Bill of Particulars

6. Defendant, in order to prepare for and defend the charges herein, requires a bill of particulars setting forth the following:

(a) State specifically each act and omission or failure to act by defendant upon which the prosecution will rely to prove the allegation that the defendant did willfully and knowingly fail to make an income tax return for 1967 and 1968.

(b) State specifically and separately each and every other event or fact which the prosecution will claim indicates that the defendant violated section 7203, Internal Revenue Code.

(c) The names of the witnesses with knowledge of the facts to establish that the defendant did willfully and knowingly fail to make said income tax returns and whether or not the prosecution will rely on these witnesses at trial.

7. This information is sought to clarify the criminal charge against the defendant and is within the particular knowledge of the United States Attorney and cannot be obtained by means other than legal process.

8. The information requested is not of an evidentiary nature, and without it, the defendant cannot adequately prepare or conduct his defense. Furthermore, this information is required to prevent surprise at trial.

9. The instant Information merely recites conclusory allegations and lacks the degree of factual certainty which would enable the defendant to adequately prepare for his defense.

10. The defendant respectfully reserves the right to request other details to be furnished which are relevant to this Information and which are necessary for the proper preparation of his defense.

C. Illegally Seized Evidence

11. Counsel, through motions for discovery and inspection and for a bill of particulars, has asked the government to disclose whether or not any evidence has been acquired through search and seizure or electronic eavesdropping. In the event any evidence was the subject to search and seizure or electronic eavesdropping, a hearing is requested to assess the constitutional propriety of that search and/or seizure.

12. Before any specific constitutional claims can be made here, it is imperative that the defendant be advised of whether such searches and seizures or electronic surveillance have been conducted by the government or through agents or agencies of the government. Therefore, the defendant respectfully reserves his rights to assert any and all constitutional claims relative thereto.

D. Confidential Informant

13. The defendant requests that the government disclose whether any confidential informants supplied evidence to the prosecution either before, during the course of, or after the Information was filed in this case so that the defendant may properly move to suppress that evidence on the ground that it was illegally obtained.

14. It may be that those government informers will not be used as witnesses in this case, but the defendant is entitled to know about the source of this information because it may have furnished leads to other evidence which will be offered in the trial.

E. Brady Material

15. The defendant requests the government to disclose and divulge to the defendant any evidence in their prosecution to the accused including but not limited to statements or investigative reports, witnesses, books, papers, reports, photographs or any other tangible items of evidence in the custody or control of the prosecution or any government agencies working under the supervision of the government, favorable to the defense. This demand is made under the authority of Brady v. Maryland, 373 U.S. 83.

16. It is imperative that this evidence be delivered before trial so that it might be effectively used. In order to effectively utilize any Brady material which may exist, it is essential that the defense have it far enough in advance of trial so that other investigatory leads may be pursued in sufficient time to permit a full preparation of the defendant's case.

17. The decision of what materials exist in the government's file favorable to the defendant should not be left with the prosecution but should be supervised by the Court in the presence of the defense counsel.

F. Other Motions

18. The defendant respectfully reserves his right to request further details in the form of either bills of particulars or in the nature of discovery and inspection as the need for that information becomes apparent.

19. The defendant also reserves his rights to make any and all other motions which may be necessitated by reason of the granting of certain relief requested herein. Furthermore, if facts should develop which require the making of other motions, the defendant respectfully reserves his right to make such motions.

Wherefore, it is respectfully requested that this Court grant the relief requested in the various branches of this motion and accord to the defendant, such other and additional relief as may appear just and proper.

Richard E. Moot

Sworn to before me this

22 day of April, 1974.

FLORENCE D. BELL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19.76

16

GOVERNMENT'S NOTICE OF READINESS – filed 8-14-74.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
Plaintiff	:	CR. NO. 1974-44
- vs -	:	
	:	NOTICE OF READINESS
JOSEPH C. VISPI,	:	
Defendant	:	
	:	
	:	
	:	

The United States, by its attorney, the United States Attorney for the Western District of New York, in order to satisfy the provisions of the District Court Plan For Achieving Prompt Disposition Of Criminal Cases, pursuant to Rule 50(b) of the Federal Rules Of Criminal Procedure, hereby notifies the Court and Counsel for the Defendant, that the United States is ready for trial in this case.

Dated at Rochester, New York August 13, 1974

Respectfully submitted,

JOHN T. ELFVIN
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
502 U.S. Courthouse
Buffalo, New York 14202

David G. Larimer

By: DAVID G. LARIMER
Assistant United States Attorney

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke outlining status of Motion for Discovery and Inspection and requesting an immediate trial – dated 8-22-74.

LAW OFFICES
OHLIN, DAMON, MOREY, SAWYER & MOOT
1800 LIBERTY BANK BUILDING
BUFFALO, NEW YORK 14202

TELEPHONE
AREA CODE 716
856-5500

ROY P. OHLIN
1925-1971
MASON O. DAMON
JOSEPH H. MOREY, JR.
WILLIAM S. H. SAWYER
ROBERT J. HODGSON
RICHARD E. MOOT
NORMAN R. STEWART
WILLIAM H. GILBERT
ROBERT J. PLACHE
JAMES S. McASKILL
GEORGE H. GIBSON
MALCOLM K. BUCKLEY, JR.
JAMES S. MARVIN
DOUGLAS G. KIRKPATRICK
JAMES H. KIEFFER
JAMES N. SCHMIT
TERRENCE H. CONNORS
BRIAN P. CROSBY
ROBERT S. CHESBRO

August 22, 1974

Hon. Harold P. Burke
U.S. Court House
Rochester, New York 14614

Re: United States v. Joseph C. Vispi
Cr. No. 1974-44

Dear Judge Burke:

I enclose copies of the Notice of Readiness and a letter of August 8, 1974, from Mr. Larimer in the above.

Defendant's Discovery Motion of May 13th is still pending before you. Our Memorandum in Support of the Discovery Motions was filed and served May 24th. The Government elected not to file a Reply Memorandum. This, as Mr. Larimer suggests, explains the apparent confusion. Apparently, you were waiting for the Government's Memorandum before passing upon the disputed items of discovery.

In part, the Government has complied with defendant's requested discovery and upon others, it has declined to furnish the information. The requested items and the Government's response are tabulated on page 3 of our Memorandum, a copy of which is enclosed for your convenience.

The only two remaining items in dispute which require your decision are:

1. The names of witnesses requested in Paragraph 5(e);
2. A bill of particulars stating the acts and ommissions or failures to act which support the allegations contained in the information, requested in Paragraphs 6(a)(b)(c).

.....

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke outlining status of Motion for Discovery and Inspection and requesting an immediate trial — dated 8-22-74.

Hon. Harold P. Burke

Re: U.S. v. Vispi page two...

As soon as these matters are resolved and the calendar of the court permits, the defendant wishes to have this case set for trial.

Respectfully yours,

Richard E. Moot
for OHLIN, DAMON, MOREY, SAWYER & MOOT

r
enclosures

cc: Mr. John R. Elfvin
Mr. David G. Larimer

**GOVERNMENT'S MOTION TO SET TRIAL DATE –
filed 5-2-75.**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	CR. NO. 1974-44
Plaintiff	:	NOTICE OF MOTION
- vs -	:	
JOSEPH C. VISPI,	:	
Defendant	:	

SIR:

PLEASE TAKE NOTICE that the undersigned will bring the annexed motion on for hearing before this Court at the U.S. Courthouse, 100 State Street, Rochester, New York, on the 12th day of May, 1975, at 10:00 a.m., or as soon thereafter as counsel can be heard.

Dated at Rochester, New York, April 30, 1975.

Yours very truly,

RICHARD J. ARCARA
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
502 U.S. Courthouse
Buffalo, New York 14202

By: DAVID G. LARIMER
Assistant United States Attorney

TO:

RICHARD E. MOOT, ESQ.
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Building
Buffalo, New York 14202

GOVERNMENT'S MOTION TO SET TRIAL DATE –
filed 5-2-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	CR. NO. 1974-44
Plaintiff	:	
- vs -	:	MOTION
JOSEPH C. VISPI,	:	
Defendant	:	

MOTION TO SET A DATE FOR TRIAL

FOR CRIMINAL TRIAL CALENDAR

Now comes the United States Attorney, by Assistant United States Attorney David G. Larimer, and states the United States Attorney is ready for trial in this action, and moves this Court to set a date for trial of this action.

Dated at Rochester, New York, April 30, 1975

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney

By: DAVID G. LARIMER
Assistant United States Attorney

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH C. VISPI,

Defendant.

NOTICE OF MOTION AND MOTION TO DISMISS INFORMATION

Cr. No. 74-44

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of RICHARD E. MOOT, sworn to on the 12th day of May, 1975, and upon the Information and all the other proceedings had herein, the undersigned will move this Court on behalf of the defendant, JOSEPH C. VISPI, at a Term of this Court to be held in the United States Courthouse in the City of Rochester, State of New York, on the 12th day of May, 1975, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order granting the following relief:

1. Dismissing the Information herein upon the following grounds:

(a) The defendant has been denied his right to a speedy trial in violation of the Sixth Amendment to Constitution of the United States.

(b) There has been unnecessary delay in bringing the defendant to trial in violation of Rule 48(b), Federal Rules of Criminal Procedure.

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

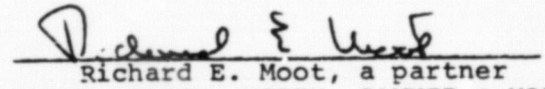
(c) The government was not ready for trial within six months from the date of the filing of the Information in violation of the "Plan for Achieving Prompt Disposition of Criminal Cases" promulgated by United States District Court for Western District of New York pursuant to the requirement of Rule 50(b), Federal Rules of Criminal Procedure.

(d) The delay between the alleged commission of the criminal act and the filing of the Information has denied the defendant due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Such other and further relief as to the Court may seem just and proper.

Dated: Buffalo, New York
May 12, 1975

Yours, etc.



Richard E. Moot, a partner
OHLIN, DAMON, MOREY, SAWYER & MOOT
Attorneys for Defendant
Joseph C. Vispi
1900 Liberty Bank Building
Buffalo, New York 14202
Telephone: (716) 856-5500

TO: DAVID G. LARIMER, ESQ.
Assistant United States Attorney
United States Courthouse
Rochester, New York 14614

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH C. VISPI,

Defendant.

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS INFORMATION

Cr. No. 74-44

STATE OF NEW YORK)
) SS:
CITY OF BUFFALO)

RICHARD E. MOOT, being duly sworn, says:

1. I am a member of the firm OHLIN, DAMON, MOREY, SAWYER & MOOT, with offices at 1800 Liberty Bank Building, Buffalo, New York, and represent the defendant, JOSEPH C. VISPI.

2. I make this affidavit in support of the annexed Motion to Dismiss the Information accusing the defendant of willful failure to file an income tax return for the years 1967 and 1968.

3. Upon information and belief, in or about October, 1969, the defendant was requested to provide a representative of the Internal Revenue Service with information pertinent to his 1967 and 1968 income tax returns.(Exhibit A)

4. Upon information and belief, subsequent to August, 1969, various conferences ensued between the defendant and

representatives of the Internal Revenue Service.

5. On or about the 1st day of February, 1974, an Information was filed in the United States District Court for the Western District of New York charging Joseph C. Vispi, on two counts with willful failure to file an income tax return for the years 1967 and 1968 in violation of the Internal Revenue Code: Title 26 U.S.C., section 7203. (Exhibit B)

6. On the 22nd day of April, 1974, defendant Joseph C. Vispi was arraigned before the Hon. Harold P. Burke and entered a plea of not guilty.

7. On or about April 23, 1974, the defendant served a Notice of Motion with affidavit seeking pretrial discovery and a bill of particulars.

8. On or about May 6, 1974, the government filed its response to said Motion.

9. On or about May 24, 1974, the defendant filed a Memorandum of Law in support of said Motion. Oral argument was waived and the matter was considered submitted to the Court as of May 28, 1974.

10. On August 6, 1974, I wrote to the United States Attorney in charge of the prosecution of this case and advised that the defendant was ready to proceed to the trial of this matter. (Exhibit C)

11. On August 22, 1974, I likewise advised the Court that the defendant was ready to proceed to the trial of this matter. (Exhibit D)

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

12. On May 5, 1975, I received a Notice of Motion indicating that the United States Attorney is ready for trial and moved the Court for the first time to set a trial date. (Exhibit E)

13. The first motion by the government to set a trial date comes seven and six years after the alleged commission of the respective counts of the Information; fifteen months after the filing of the criminal charge; one year after final submission of pretrial motions; and eight months after defense counsel advised the government that defendant wished to have the case set for trial.

14. That the aforementioned delays are substantial and unreasonable and constitute a denial of the defendant's fundamental right to a speedy trial as guaranteed by the Sixth Amendment to the Constitution of the United States.

15. That the defendant has in no way acquiesced in or induced such delay.

16. That there has been an unnecessary delay in bringing the defendant to trial in violation of Rule 48(b), Federal Rules of Criminal Procedure.

17. That the delay in bringing the defendant to trial has resulted in serious prejudice to the defendant, i.e. the passage of time has impaired the defendant's ability to reconstruct the events surrounding his alleged willful failure to file an income tax return for the years 1967 and 1968; the defendant has been precluded from the opportunity to have his case tried

while the facts are comparatively fresh in his mind and the minds of his witnesses, whereas the government witnesses, upon information and belief, kept voluminous and detailed notes of their investigation and evidence which can be used to refresh their recollection and create inferences of possible guilt which defendant may not be able to rebut; the defendant has not been able to minimize the damage to his reputation and profession through a prompt and speedy vindication of his innocence; the pretrial anxiety of the defendant and his family has been prolonged and resulted in a deterioration of his health and well-being and his ability to recall the events of seven and eight years ago with accuracy and to obtain witnesses to said events in support of his testimony.

18. That it is the assumption of the Sixth Amendment that unreasonable delays are by their very nature prejudicial and it is not incumbent upon the defendant to demonstrate affirmatively how he has been prejudiced by an unreasonable delay. United States v. Lustman, 258 F2d 475, (2Cir), cert.den. 358 U.S. 880, 3 L Ed 2d 109, 79 S. Ct. 118, (1958).

19. That the evidence which is the basis of this Information was within the knowledge of the government since at least October, 1969, and that the government did not file this Information until February, 1974, four and one-half years later.

20. That the delay between the alleged commission of the criminal act and the filing of the formal charge constitutes

a denial of the defendant's right to due process as guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States.

21. That this delay was purposeful and deliberate, and caused the defendant actual prejudice, i.e. his ability to present an effective defense has been impaired and his right to a fair trial has been undermined by the disappearance of evidence and witnesses, the deterioration of his health, the disruption of his employment as well as the fact that the mere passage of time results in punishment to the defendant through the anxiety created in him, his family and his friends which is inherent to such an investigation.

WHEREFORE, it is respectfully requested that this Court dismiss the Information together with such other and further relief as the Court may deem just and proper.

Richard E. Moot

Richard E. Moot

Sworn to before me this
12th day of May, 1975.

Terrence M. Connors

TERRENCE M. CONNORS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

Address any reply to:

US Treasury Department

District Director

Internal Revenue Service

Date: October 6, 1969

In reply refer to: AU:F:19:DP

Mr. Joseph Vispi
16 Berryman Drive
Snyder, New York

Dear Mr. Vispi:

I find it impossible to hold open the audit of your 1965 and 1966 tax returns any longer. If substantiation is not provided for the following matters by October 16, 1969 I will find it necessary to disallow these deductions and assess the necessary tax on them. If a meeting is arranged for between now and the 16th, I would be interested in seeing your 1967 and 1968 tax returns. The items needing substantiation for 1965 and 1966 are as follows:

1965 and 1966 - Contributions
" " " - Dues and Meetings
" " " - Typing Expenses
" " " - New York State Job Expenses
" " " - Auto Expenses
" " " - Promotional Expenses

If you care to contact me I can be reached at 842-3681 by 'phone or at the Field Audit Division of the Internal Revenue Service, 34 W. Mohawk St., Buffalo, New York, for an appointment.

Very truly yours,

Dominick Pardi

Dominick Pardi

EXHIBIT A

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

August 6, 1974

Honorable David G. Larimer
Assistant United States Attorney
United States Attorney Office
United States Court House
Rochester, New York 14614

Re: U.S. vs. Joseph C. Vispi
Cr. 1974-44

Dear Mr. Larimer:

We have not had your response to our Brief in support of the Defendant's discovery motion. To protect the interest of my client, I will have to ask that the delay be charged against the Government.

Please let me know when we may have your Brief so that the matter may be submitted to Judge Burke.

Veryytruly yours,

Richard E. Moot
for OHLIN, DAMON, MOREY, SAWYER & MOOT

REM:mfm

EXHIBIT C

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

August 22, 1974

Hon. Harold P. Burke
U.S. Court House
Rochester, New York 14614

Re: United States v. Joseph C. Vispi
Cr. No. 1974-44

Dear Judge Burke:

I enclose copies of the Notice of Readiness and a letter of August 8, 1974, from Mr. Larimer in the above.

Defendant's Discovery Motion of May 13th is still pending before you. Our Memorandum in Support of the Discovery Motions was filed and served May 24th. The Government elected not to file a Reply Memorandum. This, as Mr. Larimer suggests, explains the apparent confusion. Apparently, you were waiting for the Government's Memorandum before passing upon the disputed items of discovery.

In part, the Government has complied with defendant's requested discovery and upon others, it has declined to furnish the information. The requested items and the Government's response are tabulated on page 3 of our Memorandum, a copy of which is enclosed for your convenience.

The only two remaining items in dispute which require your decision are:

1. The names of witnesses requested in Paragraph 5(e);
2. A bill of particulars stating the acts and ommissions or failures to act which support the allegations contained in the information, requested in Paragraphs 6(a)(b)(c).

.....

EXHIBIT D

Hon. Harold P. Burke

Re: U.S. v. Vispi page two...

As soon as these matters are resolved and the calendar of the court permits, the defendant wishes to have this case set for trial.

Respectfully yours,

Richard E. Moot
for OHLIN, DAMON, MORLEY, SAWYER & MOOT

r
enclosures

cc: Mr. John R. Elfvin
Mr. David G. Larimer

bcc: Joseph Vispi

FXHIBIT D

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	CR. NO. 1974-44
Plaintiff	:	
	:	NOTICE OF MOTION
- vs -	:	
	:	
JOSEPH C. VISPI,	:	
	:	
Defendant	:	
	:	
	:	
	:	
	:	

SIR:

PLEASE TAKE NOTICE that the undersigned will bring the annexed motion on for hearing before this Court at the U.S. Courthouse, 100 State Street, Rochester, New York, on the 12th day of May, 1975, at 10:00 a.m., or as soon thereafter as counsel can be heard.

Dated at Rochester, New York, April 30, 1975.

Yours very truly,

RICHARD J. ARCARA
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
502 U.S. Courthouse
Buffalo, New York 14202

By: DAVID G. LARIMER
Assistant United States Attorney

TO:

RICHARD E. MOOT, ESQ.
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Building
Buffalo, New York 14202

EXHIBIT E

MOTION TO DISMISS INFORMATION FOR FAILURE TO AFFORD DEFENDANT A SPEEDY TRIAL, etc., filed 5-12-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff	:	CR. NO. 1974-44
- vs -	:	MOTION
JOSEPH C. VISPI, Defendant	:	

MOTION TO SET A DATE FOR TRIAL

FOR CRIMINAL TRIAL CALENDAR

Now comes the United States Attorney, by Assistant United States Attorney David G. Larimer, and states the United States Attorney is ready for trial in this action, and moves this Court to set a date for trial of this action.

Dated at Rochester, New York, April 30, 1975

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney

By: DAVID G. LARIMER
Assistant United States Attorney

EXHIBIT E

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke enclosing authority in support of Motion to Dismiss Information – dated 5-15-75.

ROY P. OHLIN
1928-1971

MASON O. DAMON
JOSEPH H. MOREY, JR.
WILLIAM S. H. SAWYER
ROBERT J. HODGSON
RICHARD E. MOOT
NORMAN R. STEWART
WILLIAM H. GILBERT
ROBERT J. PLACHE
JAMES S. McASKILL
GEORGE H. GIBSON
MALCOLM K. BUCKLEY, JR.
JAMES S. MARVIN
DOUGLAS G. KIRKPATRICK
JAMES H. KIEFFER
JAMES N. SCHMIT
ANDREW FELDMAN
TERRENCE M. CONNORS
BRIAN P. CROSBY
ROBERT B. CHESSRO
THOMAS F. CURRIE
CHRISTOPHER T. GR[illegible]NE

LAW OFFICES
OHLIN, DAMON, MOREY, SAWYER & MOOT
1800 LIBERTY BANK BUILDING
BUFFALO, NEW YORK 14202

TELEPHONE
AREA CODE 716
856-5500

May 15, 1975

Honorable Harold P. Burke
U.S. Court House
Rochester, New York

Re: U.S. vs. Joseph C. Vispi
Civ. No. 74-44
(26 U.S.C. 7203 - Failure to file Income)
(Tax Return)

Dear Judge Burke:

In accordance with your Honor's direction for a final submission by Friday, May 16th, I enclose the citations of the principal authorities in support of defendant's motion to dismiss the information on the grounds the government has not brought the case on for trial within the required time under the rules, decided authorities and constitutional provisions relating to the accused right to a speedy trial and due process of law.

The chronology of events with the exception of the date of filing the delinquent returns, (January 21, 1970) is set forth in the moving affidavits. It shows:

1. The information charging willful failure to file income tax returns for the years 1967 and 1968 in violation of Sec. 7203, Internal Revenue Code; 26 U.S.C. Section 7203, was filed February 1, 1974 more than four years after the returns had in fact been filed. (Amended returns and payment in full was made in October 1971).

2. Defendant was arraigned April 22, 1974 and defense counsel filed, argued and briefed all pretrial discovery motions by May 22, 1974 over a year ago.

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke enclosing authority in support of Motion to Dismiss Information — dated 5-15-75.

3. The prosecution filed a limited response to defendant's request but neglected to file any opposing papers or briefs on the disputed items or otherwise to take any action to bring the case on for trial until advised by defense counsel on August 6, 1974 of its delinquency.

4. Having been so advised of its delinquency, the prosecution filed a belated Certificate of Readiness dated August 13th, but took no further action to bring the matter on for trial until its motion to set a trial date of April 30, 1974 eight months later, a date then 15 months after the filing of the information and seven and six years after the alleged offenses.

It is respectfully submitted these uncontroverted facts establish an unavoidable pattern of reluctance to prosecute and an inference if not overt evidence of a plan to abandon the prosecution once it was so untimely and unfairly commenced.

The anxiety, harm and prejudice to the defendant, a practicing lawyer who completed and filed the delinquent returns with payment in full of the taxes and interest years ago and prior to the laying of the information can not be seriously questioned. Now years after the events and worn with anxiety, he must face govenment witnesses armed with voluminous records and memoranda. Defendant by contrast must now rely soley on his memory and without ready access to the documents and witnesses of a hectic period in his life which occasioned the untimely filing of his tax returns.

In accordance with law and in the interest of justice to this defendant as well as the prompt and orderly enforcement of the law, the present misdemeanor charges should be dismissed.

Defendant hereby consents to any delay which may be required for the disposition of this motion.

In the event the motion is denied, Defendant waives his right to trial by jury and requests a trial at the earliest available date.

Respectfully submitted

Richard E. Moot

Richard E. Moot
for OHLIN, DAMON, MOREY, SAWYER & MOOT

REM;mfm

Copy:
David G. Larimer, Esq.
U.S. Attorney
Rochester, New York

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke enclosing authority in support of Motion to Dismiss Information — dated 5-15-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	CR. NO. 1974-44
Plaintiff	:	
- vs -	:	NOTICE OF MOTION
JOSEPH C. VISPI,	:	
Defendant	:	

SIR:

PLEASE TAKE NOTICE that the undersigned will bring the annexed motion on for hearing before this Court at the U.S. Courthouse, 100 State Street, Rochester, New York, on the 14th day of October, 1975, at 10:00 a.m., or as soon thereafter as counsel can be heard.

Dated at Rochester, New York, September 23, 1975

Yours very truly,

RICHARD J. ARCARA
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
502 U.S. Courthouse
Buffalo, New York 14202

Eugene Welch

By: EUGENE WELCH
Assistant United States Attorney

TO: RICHARD E. MOOT, ESQ.
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Building
Buffalo, New York 14202

GOVERNMENT'S MOTION TO SET TRIAL DATE –
filed 9-24-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	CR. NO. 1974-44
Plaintiff	:	
- vs -	:	MOTION
JOSEPH C. VISPI,	:	
Defendant	:	

MOTION TO SET A DATE FOR TRIAL

FOR CRIMINAL TRIAL CALENDAR

Now comes the United States Attorney, by Assistant United States Attorney Eugene Welch, and states the United States Attorney is ready for trial in this action, and moves this Court to set a date for trial of this action.

Dated at Rochester, New York, September 23, 1975.

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney

Eugene Welch

By: EUGENE WELCH
Assistant United States Attorney

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke citing further authority in support of Motion to Dismiss Information – date of letter 10-2-75 – filed 10-6-75.

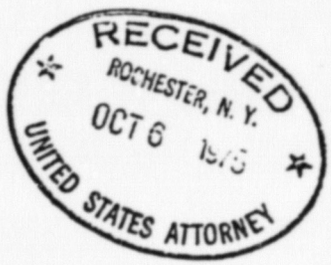
P. OHLIN
28-1971

IN O. DAMON
PH H. MOREY, JR.
IAM B. H. SAWYER
RT J. HODGSON
ARD E. MOOT
AM R. STEWART
IAM H. GILBERT
RT J. PLACHE
S S. McASKILL
GE M. GIBSON
OLM K. BUCKLEY, JR.
S B. MARVIN
LAS G. KIRKPATRICK
S M. KIEFFER
S H. SCHMIT
EW FELDMAN
ENCE M. CONNORS
N P. CROSBY
RT B. CHESARO
AS F. CURRIE
STOPHER T. GREENE

LAW OFFICES
OHLIN, DAMON, MOREY, SAWYER & MOOT
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BUFFALO, NEW YORK 14202

TELEPHONE
AREA CODE 716
856-5500

October 2, 1975



Honorable Harold P. Burke
U. S. Courthouse
Rochester, New York

Re: U. S. vs. Joseph C. Vispi
Civ. No. [illegible]-44
(26 U.S.C. 7203 - Failure to file Income Tax Return)

Dear Judge Burke:

In support of the defendant's pending motion to dismiss for failure to prosecute, I would like to bring to the court's attention the additional authority of U. S. v. Brown decided by the Court of Appeals for the District of Columbia August 1, 1975 in which the charges were dismissed. Excerpts from the opinion from our looseleaf service are enclosed. I will endeavor to furnish you with the completed opinion next week. The Court of Appeals in Brown has supported the Second Circuit decision of Hilbert v. Dooling, 476 F2d 355 (1973). The rationale of the Second Circuit has been to adopt a moderate course, "focusing primarily on prevention of prosecutorial delay." and technicalities. The purpose of the rule requiring a prompt trial is stated by the Second Circuit:

> "The purpose of Rule 4 is to insure that regardless whether a defendant has been prejudiced in a given case or his constitutional rights have been infringed, the trial of the charge against him will go forward promptly instead of being frustrated by creeping, paralytic procedural delays of the type that have spawned a backlog of thousands of cases, with the public losing confidence in the courts and

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke citing further authority in support of Motion to Dismiss Information — date of letter 10-2-75 — filed 10-6-75.

gaining the impression that federal criminal laws cannot be enforced."

U. S. v. Pierro, 478 F2d 386 (2d Cir. 1973) cited by the government in opposition to the defendant's motion does not meet the heavy burden placed upon the government in this case. In Pierro dismissal was denied because it rested upon a technical violation of the rule and the court said it was "never intended that technicalities would carry the day."

Defendant, Joseph Vispi, relies upon no technicalities where the alleged misdemeanors were purportedly committed six and seven years prior to the information and more than a year and a half has past since the filing of the information. Under the authorities cited, particularly U. S. v. Brown, the technical arguments advanced by the government to justify this delay should not be permitted to carry the day. The information should be dismissed before the defendant is further jeopardized by the inordinate delay which has handicapped his defense. The stigma and anxiety which the defendant and his family have suffered for so long should be ended.

Respectfully submitted,

Richard E. Moot
for OBLIN, DAMON, MOREY, SAWYER & MOOT

REM:nss
Enclosure

cc: David G. Larimer, Esq.
U. S. Attorney
Rochester, New York

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke advising that the defense has not yet received the names of witnesses – dated 10-16-75.

ROY P. OHLIN
1928-1971

MASON O. DAMON
JOSEPH H. MOREY, JR.
WILLIAM B. H. SAWYER
ROBERT J. HODGSON
RICHARD E. MOOT
NORMAN R. STEWART
WILLIAM H. GILBERT
ROBERT J. PLACHE
JAMES S. McASKILL
GEORGE M. GIBSON
MALCOLM K. BUCKLEY, JR.
JAMES S. MARVIN
DOUGLAS G. KIRKPATRICK
JAMES M. KIEFFER
JAMES H. SCHMIT
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BRIAN P. CROSBY
ROBERT B. CHESBRO
THOMAS F. CURRIE
CHRISTOPHER T. GREENE
ROBERT W. CONSTANTINE

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TELEPHONE
AREA CODE 716
856-5500

October 16, 1975

The Honorable Harold P. Burke
United States District Judge
United States Courthouse
Rochester, New York 14614

Re: United States v. Joseph C. Vispi
Cr. No. 1974-44

Dear Judge Burke:

On Tuesday morning at the Calendar Call Your Honor directed the Government to furnish the list of witnesses to defense counsel. As I remembered it, the objection or plea for time "due to the logistics" made by the Government was overruled and the names were ordered to be supplied right away.

Since Monday morning I have received two telephone calls from Mr. Welch as well as his letter of October 14th which was not received until Thursday afternoon. The names of witnesses has still not been supplied. Instead, the Government has requested stipulations:

1. That the returns were not in fact timely filed.

2. That the taxpayer had taxable income for the years '67 and '68.

3. The Government also advised that it will not supply information on acts to support the charge of willfulness, but apparently relies upon the fact defendant was an attorney who prepared tax returns for others and had himself requested an extension of time.

LETTER FROM RICHARD E. MOOT, attorney for defendant, to Honorable Harold P. Burke advising that the defense has not yet received the names of witnesses — dated 10-16-75.

From this response of the Government, it appears that in fact the Government was not ready for trial as stated in open court, Tuesday, October 14th, nor when the prior certificates of readiness were filed August 13, 1974 or on April 30, 1974 and September 23, 1974 when the case was moved for trial.

The simple truth of the matter is the Government is not and has not been ready for trial nor does it desire a trial. Under these circumstances, it is not incumbent upon the defendant or the court to insist upon a trial.

For the reasons previously urged upon the defendant's motion to dismiss and supported by subsequent events, defendant respectfully again urges that in the interest of justice and to achieve the objective of the rule for speedy trials, that the special circumstances in this case require that the information which charges defendant with the commission of a misdemeanor seven years ago be, at last, dismissed.

Respectfully yours,

Richard E. Moot

REM:nt

cc: Eugene Welch

P.S. Since dictating this letter and following our earlier conversation by telephone, Mr. Welch's secretary telephoned me a list of 27 witnesses at 3:50 p.m.

R.E.M.

DECISION AND ORDER OF JUDGE BURKE PERTAINING TO DISCOVERY MOTION TO DISMISS – filed 10-20-75.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES

- vs - CR: 1974-44

JOSEPH C. VISPI

Richard E. Koot
1800 Liberty Bank Building
Buffalo, N.Y. 14202
Attorney for defendant

Eugene Welch
Assistant United States Attorney
United States Court House
Rochester, N.Y. 14614
Attorney for the government

The information herein was filed February 1, 1974. The defendant was arraigned on April 22, 1974 and pleaded not guilty.

By notice of motion filed April 24, 1974 the defendant moved for discovery and inspection, for a bill of particulars, for delivery to the defendant of evidence favorable to the defendant under the authority of Brady vs. Maryland, and for complete and specific disclosure of the use by the government of any and all confidential informants. By notice of motion and motion filed May 12, 1975 the defendant moved, with supporting affidavit, to dismiss the information.

DECISION AND ORDER OF JUDGE BURKE PERTAINING TO DISCOVERY MOTION TO DISMISS — filed 10-20-75.

On May 7, 1974 the government had filed its response to the defendant's motions for discovery and inspection and for other relief.

On or before October 21, 1975 the United States Attorney shall furnish to the attorney for the defendant, copies of any statements of witnesses, exhibits and evidence, in the possession of the government, which would exculpate, tend to exculpate, or in any way provide mitigating factors in connection with the said defendant's alleged commission of the offenses charged in the information.

I am informed by letter (copy to Richard E. Moot) dated October 14, 1975 that the government had previously declined to reveal to defendant's attorney the names of the witnesses, which a former Assistant United States Attorney had declined to provide, and that the present Assistant United States Attorney handling the case has now decided to furnish the names of those witnesses. This shall be done on or before October 21, 1975.

The government had furnished on May 7, 1974 its response to the defendant's motion for a bill of particulars, for discovery and inspection and for other relief. The defendant's motion for a bill of particulars, (other than the names of witnesses referred to), for discovery and inspection, and for complete and specific disclosure of the

DECISION AND ORDER OF JUDGE BURKE PERTAINING TO DISCOVERY MOTION TO DISMISS – filed 10-20-75.

use by the government of any and all confidential informants, is in all respects denied.

The defendant's motion to dismiss the information pursuant to his motion filed May 12, 1975 is in all respects denied.

The case will proceed to trial without a jury on Thursday, October 23, 1975 at 10:00 A.M., as agreed in the event of an adverse decision on defendant's motion, at the oral argument on October 14, 1975.

ALL OF THE ABOVE IS SO ORDERED.

HAROLD P. BURKE
United States District Judge

October 17, 1975.

TRANSCRIPT OF TRIAL BEFORE HONORABLE HAROLD P. BURKE – date of trial 10-23 – 10-24-75. Transcript filed 12-16-75.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, -vs- JOSEPH C. VISPI, Defendant.	CR. NO. 74-44

Transcript of proceedings had and testimony taken in the above-entitled matter, before the HON. HAROLD P. BURKE, United States District Judge, in the United States District Court, Rochester, New York, on Thursday, October 23, 1975; and Friday, October 24, 1975.

APPEARANCES:

RICHARD J. ARCARA, ESQ.
United States Attorney
(By Eugene Welch, Esq.)
Assistant United States Attorney
United States Courthouse
Rochester, New York

Appearing on behalf of the Government.

MESSRS. OHLIN, DAMON, MOREY, SAWYER & MOOT
(By Richard E. Moot, Esq.)
1800 Liberty Bank Building
Buffalo, New York 14202

Appearing on behalf of the Defendant.

Rochester, New York

Thursday, October 23, 1975

10:00 A.M.

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MR. WELCH: If Your Honor please, this is the case of the United States versus Joseph Vispi, Criminal No. 74-44. It is to be a non-jury trial, and if Your Honor please, I have this morning requested Mr. Vispi and his attorney, Mr. Moot, to sign a waiver of jury trial, and I have consented to it, and I would like to hand it to the Court for your approval, which is required under the rules.

(Document handed to the Court.)

MR. WELCH: If Your Honor please, the charges in this Information consist of two Counts. Count One charges, Your Honor, that in the calendar year '67, the defendant Joseph Vispi, a resident of the State of New York, had received a gross income of $48,638.70 and that by reason of such income, he was required by law, following the close of the calendar year 1967, and on or before

April 15, 1968, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Buffalo, New York, at Buffalo, New York, in the Western Judicial District of New York, or to the Director of the Internal Revenue Service Center, North Atlantic Region, Andover, Massachusetts, stating specifically the items of the gross income and any deductions and credits to which he was entitled; that while knowing all foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Center, or to any proper officer of the United States.

Count Two charges, Your Honor, the same wilfull failure to file concerning the tax year 1968, wilfull failure to file by April 15, 1969.

The situation is somewhat clarified here, Your Honor. The Government intends to rely rather heavily on the fact that the

Defendant did, in fact, file returns but filed them late.

We won't belabor the point of the gross income, Your Honor. That can be proved by the returns that the Defendant did actually file, that he did make in excess of six hundred dollars gross income for the years in question.

The points that no doubt will have an issue in this trial will be the wilfullness, and with that in mind, and since this is a court trial, I am not certain that it is necessary that the Court on the record take judicial notice of the statutes, but I would request that you do take notice of 26 United States Code --

THE COURT: Just offer the statutes in evidence. That saves all the questions about it.

MR. WELCH: Then I offer in evidence 26 United States Code, Section 6012, and 26 United States Code, Section 6072; 6012, Your Honor, is the statute which specifies that

during the years in question any individual who made in excess of six hundred dollars gross income is required to file a return; and 26 United States Code, Section 6072, is the statute which requires that a taxpayer who is filing on the basis of a calendar year must file by the 15th of April of the following year.

MR. MOOT: As Your Honor has heard, this is a wilfull failure to file case. It is a criminal misdemeanor, and the principal issue in this case, if not the only issue, is whether the Government can produce evidence beyond a reasonable doubt of a wilfull failure to file. And "wilfull failure to file," as we view it, requires not simply knowledge of the requirement to file, which indeed every taxpayer who has filed a return has, but deliberate, intentional and bad purpose or evil motive.

Now the courts have used all of those words differently in different cases, but the Bishop case, we believe, decided by

the Supreme Court in '73, is now the governing authority, and that is where it has finally been resolved that the matter of wilfullness, as used in the Misdemeanor section, should be the same as used in the Fraud section of evading or defeating the taxes.

We have approached the evidence in that manner. What we intend to prove here is that we have a taxpayer who filed his returns, with the exception of two that were three days late, I believe, on time prior to the two years in question, and he filed them after the two years in question on time or with extensions.

And we expect to show from the evidence in this case that the year 1968 and the year 1969 in which this defendant, an individual practicing attorney, was attempting to put together his income tax years, were catastrophic years for him.

In the year 1968 his association in a law partnership had been terminated, and he found himself at the end of that year with-

out an office or a place to go, with his records in a state of disarray. He was required on an impromptu basis to pick up other office space, which he did in the year 1969 on a temporary basis.

We expect to show that in the year 1969, when he was being audited for his '65 and '66 returns, and when he was attempting to clear up the matter of '67 and '68 returns, he was camping out in another office. He had no regular office, no regular associates. Finally, he was able to get space, which he now enjoys, in a new office and has been an individual practitioner since.

During the same period of time in these two critical years, '68, which would have governed the '67 return, and '69, which would have governed the '68 return, in addition to his professional problems of an individual practitioner, we think we can show that his clients were as neglected as the Government; that he was unable to get their work done on time; to get his bills out on

time. He suffered problems at home and with his own personal health as well. Some of his records for the year 1967 had been misplaced, in the last-minute Christmas Eve move in the year 1968, and that we can show.

In all of this, we intend to show that the intent that this defendant had to the Government, Your Honor, was the same intent he had to his former partners, and the same intent he had to his clients, to get the work done as soon as he was physically able to do it, as he promised on repeated occasions, and as he finally, in fact, did long before this criminal charge was laid.

That is briefly what we intend to show. I think most of what I have told you we will be able to establish without question from the agents themselves that here we had a man who from the very beginning had no other intent in this case but to get these two returns done as soon as he physically could and that these returns were part of an overall problem he suffered in those two

catastrophic y[illegible]s of doing work for his clients and do[illegible]it for himself, and there wasn't in the remotest stretch of imagination at any time while he was being in daily contact or month'y contact with revenue agents with respect to an audit for two prior years, did he ever intend not to file '67 and '68. In fact, we believe it stretches the imagination some to think for a moment that an attorney who is being audited for '65 and '66 could have harbored an intent not to fulfill his promise to file the returns for '67 and '68, which he repeatedly told the agent he would do and which he finally did do. The fact that he took longer to do it than he hoped, the fact that they were done later, in our judgment, will not sustain evidence of deliberate, intentional, bad evil purpose, nor satisfy the requirement of reasonable doubt in this case.

If Your Honor will be patient as we proceed here, I think that will become clear before we are done.

Now there are two procedural matters, Your Honor, which I would like to mention. It did not occur to me when we filed our discovery motion that this case might be non-jury. Certain reports of Revenue agents, which the Government agreed to furnish to us, were made a part of that response. And I do not know whether the same reports were included in the file copy, which is on file with the Court, or not. But clearly, any matters produced for defense counsel in a criminal case, just because they are produced for me, would not ordinarily be evidence in the case.

Your Honor, as both judge and jury in this case, would have an opportunity to read those reports, and in fact, may have. I would just simply say that until any such reports which have been produced and which, I believe, are on file in your record, are formally introduced in evidence, I would ask Your Honor to disregard any of the statements in them, because until they are evidence, I don't believe they bear on the case at all.

Secondly, I have an apology to make to the Court. In my correspondence to the Court of May 15th, '75, referring to chronology of events, I included a parenthetical statement that, in fact, the taxes were paid for these two years, '67 and '68. In fact, they have not been paid, which is the customary practice of the Internal Revenue Service, which is not to send a notice or to insist upon payment while a criminal case is pending.

Apparently, Your Honor, I misconstrued what my client told me with respect to the payment of the disputed items for '65 and '66, and I was led to that error in my letter.

Again, I ask the Court to disregard that and not let it bear on this case. I believe it is undisputed that the taxes in this case have not been assessed or been paid.

THE COURT: I was surprised at it, and that is why I questioned it at the time, because usually they won't make any settlement while there is a criminal tax

pending.

MR. MOOT: There is no question that my client offered to pay.

THE COURT: I understand.

MR. MOOT: And that, I think, will be developed as we go along. But he has not received a formal assessment or a notice. In fact, I don't believe that the final dollar figures have been agreed upon. Certainly, the figures are not the same as he was told as they are in the Information.

One other item, if I may, with respect to Mr. Welch's opening. We do not read the Information, nor do I believe it says that he is charged with wilfull failure to file the returns on April the 15th. The Information says he was a taxpayer required to file, but nowhere does it say in the Information here that he wilfully failed to file the returns on time. It says he wilfully failed to file them and that he was a taxpayer like you and me, who had a statutory obligation. But whether, in fact, he received an extension

of time, [illegible]cher in fact he was required to file on that date or not, I believe we will have to await the trial.

MR. WELCH: If Your Honor please, the Information itself, which I can tender to Your Honor, does say that by reason of said income, he was required by law, following the close of the calendar year 1967, and on or before April 15, 1968, to make an income tax return.

Further on down it says he did wilfully and knowingly fail to make said income tax return. The very same wording of this Information has been upheld by a Circuit-level decision, Your Honor, which I am attempting to find out now. I read it yesterday. The simple matter of this Information is that it does charge wilfull failure to file a timely return, and the Court construed the wording of this Indictment that said income tax return to mean a timely return, one filed by April 15th of the calendar year following when it was due.

THE COURT: He has a right to extend the time.

MR. WELCH: It may very well be a question of fact whether an extension was granted, and we will contend that no extension was granted, and we would like to explore the circumstances of that with the Court.

THE COURT: I understood him to say that is a matter of inquiry of the case.

MR. WELCH: Yes, Your Honor.

May we proceed with the proof, Your Honor.

THE COURT: Yes.

R I C H A R D E. P E L L A N D, J R.,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Pelland, would you tell the Court how you are employed?

A I am employed by the United States Treasury, Internal Revenue Service, Andover Service Center, Andover,

Massachusetts.

Q What is your duty there?

A I am a Senior Accounting Technician. As such, I supervise a group of employees that researches the records of Internal Revenue, at the request of other Internal Revenue employees. I'm also the Director's representative at trials, as the Director of the Andover Service Center, as custodian of records for all tax returns from New England and the northern portion of New York State.

Q Would that include the tax returns from 1965 through the present of a taxpayer living in Buffalo, New York?

A Yes, sir.

Q Pursuant to requests from our office, did you conduct a search of the records of the Andover Service Center tax returns for Joseph Vispi for the years 1965, 1966, 1967 and 1968?

A Yes, sir.

MR. WELCH: Would you mark this for identification?

(Government's Exhibit 1 marked for identification.)

MR. MOOT: Rather than delaying this, subject to an opportunity to compare

these returns with the taxpayer's copies during the noonhour, we have no objection to the introduction of the returns for these years.

THE COURT: Any discrepancy bring to my attention, then.

MR. MOOT: I will. Thank you, Your Honor.

The same stipulation applies to all the years, '65 through '68.

THE COURT: We will give it a number now, and I will receive it in evidence, subject to that caveat.

(Government's Exhibits 2 through 6 marked for identification.)

MR. WELCH: Your Honor, 1965 would be G-1; 1966 will be G-2. G-3 is a return for the year 1967. G-4 is an amended return for the year 1967. G-5 is a return for the year 1968; and G-6 is an amended return for the year 1968.

DIRECT EXAMINATION CONTINUED

BY MR. WELCH:

Q Mr. Pelland, prior to testifying here this morning, you

had an opportunity to examine the returns, is that correct?

A Yes.

Q Could you tell the Court how it can be determined from these returns the date that they were filed?

A There is a stamp placed on the face of the return at the time that they are filed. This is the practice of the Service on all delinquent returns.

THE COURT: When was G-1 filed?

A April 18, 1968, Your Honor.

THE COURT: G-2?

A April 18, 1968.

THE COURT: G-3?

A January 21st, 1970.

THE COURT: G-4?

A November 4th, 1970.

THE COURT: And G-5?

A January 21st, 1970.

THE COURT: And G-6?

A November 4th, 1970.

Q Now pursuant to instructions from this office, Mr. Pelland, did you conduct a search of the records of the Andover Service Center to determine if any extensions of time had been granted to the taxpayer, Joseph Vispi, for the

years 1966, 1967 and 1968?

A Yes, I did.

Q And are there any extensions of record granted to the taxpayer, Joseph Vispi, for the years 1966, '67 and '68?

A No record of any extensions granted.

Q Just for the record, if one had been applied for but not granted, would there be any record of that application?

A No, sir, there would not.

Q So that the only extensions that were actually granted would be a matter of record in the Service Center?

A For those years, yes.

Q For the record, Mr. Pelland, were any payments made on the years 1967 and '68 in regard to the taxpayer, Joseph Vispi?

A No, sir, no payments were made.

Q Was there any indication of any payments to the credit of Mr. Vispi at any place?

MR. MOOT: For what year?

MR. WELCH: For the years 1967 and 1968?

A The only thing that I could think of that could be determined to be a credit would be the withholding tax from the Form W-2 for those years.

Q There were Form W-2's submitted with the returns for those years showing some withholding?

A Yes, sir.

Q Did that pay the entire tax liability as indicated on the returns?

A No, sir, it did not.

Q And so according to the record at the Service Center, there is still that outstanding balance due on the years '67 and '68?

A Yes, sir.

Q After having conducted a search of the records, Mr. Pelland, for the years 1965, 1966, 1967 and 1968, are there any records of any other returns having been filed by Mr. Vispi?

A No record.

Q There were no earlier filings other than what we have identified, is that correct?

A That is correct.

MR. WELCH: If Your Honor please, the Government moves into evidence G-1 through G-6.

THE COURT: They are all in evidence.

(Government's Exhibits 1 through 6

marked in evidence.)

MR. WELCH: Your Honor, I have no further questions.

CROSS EXAMINATION

BY MR. MOOT:

Q Mr. Pelland, are you familiar with the requirements for filing a return? Is it the postmark date of mailing or the time when someone administratively stamps the return? Which governs, do you know?

A The postmark, sir.

Q And when you gave the date of filing here, I think you have described the date of filing as the date which appears from the administrative stamp placed on the return, is that correct?

A Yes, sir.

Q So would it be fair to say that if a return was stamped as filed on April 18, 1968, very likely, it, in fact, had been mailed within the required time, April the 15th?

A (No response.)

Q Would that be a fair assumption, three days for the mail to get opened and to the IRS, and stamped?

A It conceivably could happen, yes, sir.

Q So that with respect to all four of these returns, only

two for the years '67 and '68 were, in fact, as near as you know, not mailed within the time required by the taxpayer, is that correct?

A I'm sorry. Would you repeat the question?

Q Insofar as you know, only the returns for '67 and '68 were not mailed, as you say, within the required time?

MR. WELCH: Objection, Your Honor.

THE COURT: Objection is overruled.

THE WITNESS: As I recall, the '65 and '66 returns were mailed in 1968, so therefore, are a couple of years delinquent.

Q Are they included in the Information charged here?

A Not to my knowledge, no, sir.

Q Is there some reason why that is so, then?

A (No response.)

Q Do you know of any reason why they are not included?

A No, sir, I do not.

Q Is it possible, then, that an extension was granted to April 15th, 1968, and in fact, complied with?

A No, sir, that is not possible.

Q But you have no explanation for why it is not included here whatsoever?

A No, sir, I do not.

Q Do you know from your position approximately how many delinquent returns there are nationally in the overall system?

A No, sir, I do not.

Q In your position with the Internal Revenue Service, are you familiar with the fact that the Commissioner of the Internal Revenue Service files an annual report with respect to the operations of the Service on an annual basis? Do you know that to be so?

A No, sir, I do not.

Q In your job, do you have occasion from time to time to examine, as you did in this case, to see whether requests for extension of time had been on file, or whether the returns had been filed and on what dates, or is this the first time you had done it?

A No, sir, it is not the first time, and I have had the opportunity to do it before.

Q Tell me, from your experience, whether you agree or disagree with the report, or the figure, of 770,587 delinquent returns for the year 67-68?

A I would have no way of knowing what the figure was and would not venture to guess how many on my own.

THE COURT: Where did those figures

come from?

MR. MOOT: Your Honor, this is the Annual Report of the Commissioner of Internal Revenue. I will have it marked as an Exhibit for identification.

(Defendant's Exhibit 1 marked for identification.)

Q Tell me whether you would have any information or knowledge when you are requested for information such as you have given in this case, do all of those cases result in criminal prosecution?

A No.

Q An overwhelming percentage do not result in criminal prosecution, is that not so?

A I would have no way of answering that question, sir.

Q Again referring to Defendant's Exhibit 1 for identification, the Commissioner's report, would you agree or disagree --

THE COURT: First, let's dispose of this report. Does that report include the Government printing stamp?

MR. MOOT: I have only inserts from it. I obtained my copy from a public library

It is the Official United States Commissioner's Report on Tax Proceedings for the year in question. I will be happy to leave it with counsel for the Government so he has a chance to verify it during the recess, or during the course of the trial, Your Honor.

Q Would you agree or disagree with the figure for the year 1968 that the number of prosecutions of all types, fraud as well as failure to file, was eight hundred and thirty?

A I have no way of knowing, sir.

THE COURT: He hasn't seen it, and he hasn't any way of --

MR. WELCH: May I object to this line of questioning, which is irrelevant and --

THE COURT: Rather than object to it, I suggest that you look at it and show it to somebody in the Internal Revenue, and I imagine it is a matter of common knowledge in that office.

MR. WELCH: I'm sure it is a matter of knowledge to Your Honor that not every delinquency gets prosecuted.

THE COURT: I'm not saying it is common knowledge. It certainly is not common knowledge to me. I am saying it is a matter of common knowledge to the employees in the Internal Revenue Office.

MR. MOOT: We will explore it, perhaps, with the other agents who may be more familiar with it, who are in the enforcement section, Your Honor. That may be more helpful.

MR. WELCH: We would be happy to stipulate that not every delinquency results in a prosecution, although we object to the relevancy of it.

THE COURT: He didn't ask if everyone does. He asked you if the overwhelming number were.

MR. MOOT: The question is --

THE COURT: The only question is, "Is that a valid document?"

MR. MOOT: Right, Your Honor.

THE COURT: I haven't the slightest doubt about it that it is. The problem is we haven't got the volume in the library here.

I haven't any doubt that they have it in the Internal Revenue office.

MR. WELCH: You are ruling, then, it is relevant in this proceeding?

THE COURT: Yes.

MR. WELCH: I will attempt to verify it and advise Your Honor of that so there won't be any problem in that regard.

THE COURT: All right.

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q Are you familiar, Mr. Pelland, with the system by which applications for extensions are made and passed upon by the Internal Revenue Service?

A In certain calendar years, yes, sir.

Q For the year 1967, are you familiar with the practice of what a taxpayer did, who he submitted it to, and who said "Yes," or "No," and how long it took, and who handled it?

A Yes, sir.

Q What was the procedure in 1967?

A The request for the extension of time would have to have been filed by the due date of the return. It could have been submitted to either the District Director or to the

Director in the Andover Service Center. It would have been passed upon by an employee of either the District Director or the Andover Service Center, and it would have been passed upon based upon the merits stated in the request for the extension of time.

Q So that if the taxpayer pursued this at the local level, at the District level, his request for an extension could be given to an employee of the District Office?

A Yes, sir.

Q I assume that any qualified or regular Revenue Agent or Special Agent would be entitled to accept that on behalf of the District Director, is that correct?

A The request for the extension?

Q Yes.

A Yes, sir.

Q Do you know to whom he would take it in the District Director's office to get a decision?

A No, I do not.

Q And do you know how that is handled internally in the District Director's office?

A No, sir, I do not.

Q Do you know how the matter of feeding the approval of such a request into the computer is made?

A Yes, sir, I do.

Q And who in the District Director's office has that responsibility?

A It would be the responsibility of the employee that made the decision that an extension of time be granted to forward a copy of the extension of time to the Andover Service Center for processing.

Q And if that were not done, it would not show up in the computer?

A That is correct.

Q So the absence of the granting of an extension of time to file a return at the Computer Center might mean either that it hadn't been granted or that a copy of it once granted had not been sent to the Center, is that correct?

A If the grant was made at the local level?

Q Yes.

A That is correct.

Q In addition, after the extension is or is not mailed -- let's assume that it was mailed by whoever had the responsibility in the District Office to the Computer Center, then would it be necessary for an employee there to open it, receive it in the mail and take some action to put it on the computer record?

A Yes, sir.

Q I take it that no file is kept of the extension itself anywhere?

A (No response.)

Q Is the extension once granted destroyed?

A After a period of three years.

Q So that you are not able to tell us today whether extensions for the years '65 and '66 in which no charge was laid were, in fact, granted or not, are you?

A I don't believe that I testified to '65, but I can testify to '66 that there were no extensions granted.

Q You mean the computer doesn't show that one employee in the District Office said it to an employee at Andover, and an Andover employee put it on the computer, but as I understand you, you are not saying that, in fact, such an extension was not granted for this year, 1966, are you?

A I am saying that the records of the Andover Service Center do not reflect an extension being granted for the years '66, '67 and '68.

Q Do they show one for '65?

A We would not have the '65 records as far as extensions of time being granted.

Q Why is that?

A They were done at the District level at that time.

Q So a new procedure was adopted in 1966?

A Yes, sir.

Q And it was the first time that the computer personnel were attempting to record on the computer whether or not the extension had been granted at the local level?

A That is correct.

Q And you have got no file in which the written extension is preserved at the present time?

A For those years?

Q That's right.

A That is correct.

Q So all you are really telling us is what, after the administrative action was taken, or should have been taken, at the District Office, and after the clerical actions, which was taken, or should have been taken at Andover, was done, that was done perfectly in every case of the 770,587 delinquent returns? Then, what you have testified to, the computer says, would be correct, is that so?

A I hesitate to answer only because the length of the question. got a little bit confused during the question.

Q Let me make it clear. I will rephrase it.

Your testimony is simply what the computer says at the present time?

A That is correct.

Q You have no knowledge as to what took place with respect to the written extension in the District Office, is that correct?

A I have knowledge of the fact that if there had been an extension granted at the District Office, that extension would have been sent to the Andover Service Center, and we would have made a permanent record of it, and we have no permanent record of it.

Q That is, if everybody did what they were supposed to do the year they put it into effect and the years after that, is that correct?

A Yes.

Q Regardless of the number involved?

A Yes, sir.

Q My question is, you have no knowledge with respect to what happened to the written request for any of these four years? All you know if what the computer says today?

A I do not know of my own knowledge that there was a request for an extension of time even requested during those four years.

Q There is no question about the fact that although your stamp here shows April 18, 1968 for both the '66 return

and the '65 return, no criminal charge is being laid with respect to those years, is there?

A Not to my knowledge, no, sir.

Q And you can't explain that for us, either, can you?

A No, sir, I cannot.

MR. MOOT: Thank you.

MR. WELCH: I have no further questions of Mr. Pelland, Your Honor.

(Witness excused at 11:00 A.M.)

D O M I N I C K M. P A R D I,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Pardi, how are you employed?

A By the Internal Revenue Service.

Q In what capacity?

A Internal Revenue Agent.

Q For how long h[illegible] you been an Internal Revenue Agent?

A Seven and a half years.

Q Including the year 1969?

A Yes, sir.

Q And where are you an Internal Revenue Service Agent?

A Buffalo, New York.

Q And were you an Internal Revenue Agent in 1969?

A Yes, sir.

Q During 1969, did you have occasion to conduct an audit of the income tax returns of one Joseph Vispi for the years 1965 and 1966?

A Yes.

Q Did you conduct this audit pursuant to any particular program?

A No.

Q Do you have any direct knowledge or personal knowledge as to why it was sent to you to conduct an audit?

A For routine examination.

Q Did anyone indicate to you what was wrong with the return or what was thought to be wrong with the return?

A You mean were there expected irregularities on this return?

Q Right.

A No, there were not.

Q Now directing your attention to April 22nd, 1969, did you have occasion to meet with Mr. Joseph Vispi?

A Yes, I did.

Q And what was the purpose of that meeting?

A To begin the investigation, the examination of his tax return.

Q Which years were you examining?

A 1965 and 1966.

Q During the course of the examination of the 1965 and 1966 returns, did you have occasion to discuss with him his '67 and '68 returns?

A Yes, I did.

Q Could you tell the Court the substance of that conversation with Mr. Vispi concerning the '67 and '68 returns?

A Yes.

MR. MOOT: Your Honor, I'm going to object unless the date and place of the conversation is fixed.

THE COURT: Read that question, please.

(Last question read.)

THE COURT: I will sustain the objection.

Q Mr. Pardi, you have testified that you met with Mr. Vispi on April 22nd, 1969, is that correct?

A That's correct.

Q And this conversation that I had just asked you about, was it on April 22nd, 1969?

A Yes.

Q Where did that take place?

A In Mr. Vispi's office.

Q Is that in Buffalo, New York?

A Yes, it is.

Q That is his law office?

A Yes.

Q Now I ask you to relate to us the conversation concerning the '67 and '68 returns?

A I asked Mr. Vispi if he had filed the '67 and '68 returns, and he informed me that he did. And I asked him if he would provide me with a copy of them so that I might bring his tax examination up to date. He said that he had filed them and that he would provide me with copies of the same returns.

Q This was on April 22nd, 1969, he told you that he had already filed '67 and '68?

A Yes, sir.

Q Did he give you any copies of the '67 and '68 returns?

A No.

Q On September 24, 1969, did you have occasion to meet with Mr. Vispi?

A Yes, I did.

Q Where was that meeting?

A It would have been in his office also.

MR. MOOT: I'm sorry. I missed the date.

Q September 24th, 1969, is that correct, Mr. Pardi?

A Yes.

Q On that occasion did you have occasion to discuss his 1967 and '68 returns?

A Yes.

Q And what, if anything, did Mr. Vispi tell you on that date?

A That he had not filed those returns.

Q The '67 and '68 returns?

A '67 and '68 returns.

Q Did he say anything else concerning those returns?

A That he had not filed them, but that he would file them, and they would be prepared by his accountant. Mr. Joseph Capolla was his accountant.

Q And what did he say about Mr. Capolla, his accountant?

A That he would engage Mr. Capolla to prepare the returns.

Q On September 24, 1969, on that same date, did you have occasion to discuss with him how he could file those returns?

A Yes, I did.

Q Relate that conversation to us, please?

A Okay. I told him that when the returns were prepared that he could either file them with myself, or he could mail them to our office or bring them into our office personally, that they did not have to be filed through me, per se.

Q Now the returns you are talking about filing are the '67 and '68 returns, is that correct?

A Yes.

Q But you were conducting an audit of the '65 and '66 returns at the time?

A That's correct.

Q On November 4, 1969, as of that date, had he yet filed, to your knowledge, the 1967 and '68 returns?

A No, sir.

Q What, then, did you do?

A I referred the case to our Intelligence Division.

Q Is that for criminal investigation?

A Yes, sir.

Q As to what tax years?

A 1967 and 1968.

MR. MOOT: What is the date?

Q November 4, 1969, Mr. Pardi, is that the date you referred it to the Intelligence Division?

A The referral report was before that time.

THE COURT: What exactly is the inquiry?

Q I would like to ascertain for the record on what date you referred it for criminal investigation?

A I signed the referral report on 11-5-69.

Q But you now just said it was prepared earlier than that?

A That's correct.

Q When was it prepared?

A To the best of my knowledge, it would have been 10-28.

Q October 28th?

A October 28th, 1969.

Q 1969?

A Yes.

Q Directing your attention, then, to January 12th, 1970, did you have occasion to meet with Mr. Vispi on that day?

A Yes, I did.

Q Where did you first meet with Mr. Vispi?

A At his office.

Q And was anyone else present?

A Yes, Special Agent Francis.

Q What took place at his office that day?

A We went to Mr. Vispi's office, Mr. Francis and myself, and Mr. Francis said he would like to talk with Mr. Vispi about the failure to file tax returns for '67 and '68. And Mr. Vispi replied that he had an appointment but that he would meet with us late in the day, and we made an appointment for, I believe, ten o'clock in our office.

Q Who is Mr. Francis?

A Mr. Francis was a Special Agent.

Q With the Intelligence Division?

A With the Intelligence Division, with the Internal Revenue Service.

Q He is a criminal investigator for the Internal Revenue Service?

A That's correct.

Q Did Mr. Francis relate this to Mr. Vispi?

A Yes, he did. That is one of the first things he did. We walked in, and he identified himself, showing him his credentials, and said that he was the Special Agent to handle the investigation.

Q Now on January 12th, 1970, you indicated that you had scheduled a meeting with Mr. Vispi for later that day?

A That's correct.

Q Did that meeting take place?

A Yes, it did.

Q Where did that take place?

A At the Buffalo Office of the Internal Revenue, the Intelligence Division.

Q Do you have any idea what time that started?

A It was in the morning. I would say about ten o'clock.

Q Could you relate to the Court what took place at that meeting?

A Yes. While Mr. Francis discussed his history and so forth, Mr. Vispi's history, his age, his education, and so forth, and --

Q Prior to taking this information from Mr. Vispi, did Mr. Francis say anything to Mr. Vispi?

A He advised him of his rights. He read the rights to Mr. Vispi.

Q He read it from a card?

A Yes.

Q Then he took this personal history from Mr. Vispi?

THE COURT: Now you say he read it from a card. I don't know what he read from the card. It might have been a calendar for

all I know.

Q Mr. Pardi, do you have any independent recollection of the exact wording of what Mr. Francis read to him?

THE COURT: Did you have him sign a waiver?

A No, he did not.

Q Did you and Mr. Francis prepare a memorandum of that interview?

A Yes, we did.

Q In the memorandum of the interview, did you set forth what was read to Mr. Vispi?

A Yes.

Q Was that accurate at the time you signed it?

A Yes, it was.

Q Do you have any independent recollection now of the exact wording of what was read to Mr. Vispi?

A I'm aware of how the rights go, but I could not recite them, if that is what you mean.

THE COURT: That isn't the question. The question is not whether you remember what the rights are but what you told him.

THE WITNESS: I could identify it if I read it.

THE COURT: You mean you marked something for identification?

THE WITNESS: I made a memorandum of that conversation, and I signed that.

MR. WELCH: Would you mark this for identification?

(Government's Exhibit 7 marked for identification.)

MR. MOOT: Your Honor, I would like some preliminary questions on G-7 before he is through with the witness.

THE COURT: You would like what?

MR. MOOT: I would like to have a preliminary examination on the Exhibit.

THE COURT: Go right ahead.

VOIR DIRE EXAMINATION

BY MR. MOOT:

Q Mr. Pardi, I am showing you G-7 for identification. This is the memorandum you are talking about, which was made on or about the time of your meeting, January 12th, 1970?

A Yes, it is.

Q It is a three-page typewritten Exhibit?

A Yes, sir.

Q Who dictated the Exhibit?

A Who dictated the Exhibit? The Exhibit would have been prepared by Special Agent Francis.

Q And the Exhibit refers to questions asked of Mr. Vispi and answers given?

A And statements that he offered as well.

THE COURT: Was it in question and answer form?

A Yes, largely.

THE COURT: Not in narrative form?

A No. It largely consisted of responses to questions. For example, the final question might have been, "Do you have anything else to offer?"

THE COURT: I don't know what it might have been, but I know you have got a memorandum of what it was.

A It was largely in question and answer form.

THE COURT: Mainly, then, the Exhibit was question and answer?

A Yes.

VOIR DIRE EXAMINATION CONTINUED

BY MR. MOOT:

Q Mr. Pardi, Exhibit G-7 for identification, which the

Government wishes to use at this occasion, does not have a single question or answer set forth in it, does it?

A To my knowledge, it does not.

Q And yet, this interrogation was in question and answer form, as you have told us, correct?

A That would be correct.

Q So, obviously, some record had to be made of the questions asked and the answers given before G-7 could be prepared, correct?

A Would you be more specific? I don't understand it.

Q Is it not correct, Mr. Pardi, that if the meeting between you and Mr. Vispi and Mr. Francis on the 12th of January was in question and answer form, then some record must have been kept of the questions asked and the answers given?

THE COURT: That means the Reporter must have transcribed it.

A There was no reporter present. No one transcribed that. It was not transcribed nor taped.

Q It was not transcribed?

A No.

THE COURT: It might have been transcribed by one of the three that were

present.

A It was not transcribed by myself. Special Agent Francis took notes on it from which he prepared that.

VOIR DIRE EXAMINATION CONTINUED

BY MR. MOOT:

Q Where are the notes?

A I have no knowledge of that.

Q So that on January 12th, from 10:10 in the morning until 11:10 a question and answer interrogation of the defendant was conducted, and allwe have now that you know of is a typewritten and a smooth summary prepared by Mr. Francis, is that so?

A Yes.

Q Have you made any search of the records involved in this case to determine whether the notations with respect to the question asked and the answer given are available?

A Of course, I was only the Revenue Agent. I did not conduct the conference. No, I have not.

Q You have not?

A No.

MR. MOOT: I'm going to object to the use of this summary until we account for

the actual memorandums of the questions asked and the answers given as explained.

THE COURT: Objection is overruled.

DIRECT EXAMINATION CONTINUED

BY MR. WELCH:

Q For the record, do you know where Mr. Francis is today?

A He is deceased.

Q Do you know when he died?

A I believe it was in 1972, although I can't be certain.

Q Present at this meeting on January 12th, 1970, was yourself and Mr. Francis and Mr. Vispi. Anyone else?

A No, sir.

Q Just for the sake of the record, I would like to read part of the Exhibit --

THE COURT: You can't read it until you get it in evidence.

MR. WELCH: I thought it had been received.

THE COURT: G-7, all right. I will receive it.

MR. MOOT: I understood it was marked for identification. I didn't know he had offered it.

MR. WELCH: I was attempting to use it to refresh the Agent's recollection. I thought Your Honor had received it.

I will offer it, Your Honor.

THE COURT: You didn't have to have my permission to mark it for identification. I ruled on something. I assumed that I was ruling on its receipt in evidence.

Anybody can mark anything they want to for identification.

MR. WELCH: May I ask a few preparatory questions to lay the foundation?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. WELCH:

Q When did you sign Government's Exhibit 7 for identification?

A January 12th, 1970.

Q And this was the same day as the conduct of the interview?

A That is correct.

Q And it is a narrative of your and Mr. Francis' recollection of what took place during that interview?

A That is correct.

THE COURT: Made by all three?

A No, just by Special Agent Francis and myself.

Q But signed by both of you on the same day you were recalling the events recorded therein?

A That's correct.

MR. WELCH: I offer it in evidence, Your Honor.

MR. MOOT: I'm going to renew my objection, Your Honor.

THE COURT: Was it typed in front of you there?

A No, it was not.

THE COURT: Francis, I take it, took those statements down?

A Yes, he did. I wouldn't say he took them verbatim. He would take notes of them.

THE COURT: He took notes of them?

A Yes.

THE COURT: What did he do with the notes?

A He prepared, I imagine, a handwritten statement.

THE COURT: You don't have to imagine --

A I don't know. I was not there when he prepared that.

THE COURT: That means he must have prepared it some place else?

A Well, in the office --

THE COURT: Probably in the adjoining office?

A Yes, that's correct.

THE COURT: You didn't see him type them?

A No, I did not.

THE COURT: You didn't see him dictate it to anybody?

A No, I did not.

THE COURT: Isn't it a common practice when an agent makes notes and then he makes his final report, he destroys the notes?

A I would say so, yes.

THE COURT: I encounter that every day.

A If you are asking me if I saw him destroy the notes, I did not.

THE COURT: I understand that.

MR. WELCH: I offer it in evidence, Your Honor.

THE COURT: I will receive it.

MR. MOOT: Objection, Your Honor.

(Government's Exhibit 7 marked in evidence.)

MR. WELCH: If I may read from it, Your Honor, the second and third paragraphs: "Visp[illegible]s advised of his Constitutional rights by my reading to him the following:

"In connection with my investigation of your tax liability, I would like to ask you some questions. However, I advise you that under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or submit any information, if such answers of information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek

the assistance of an attorney before responding."

Were you present when Agent Francis read that to Mr. Vispi?

A Yes, I was.

Q Is that an accurate statement of what he read to Mr. Vispi?

A Yes, it is.

Q Then you had started to say that subsequent to that, a personal history was taken of Mr. Vispi?

A That's correct.

Q Could you tell us his age, please, for the record?

A I believe he was forty-nine at that date.

Q Forty-nine years old on January 12th, 1970?

A That is so.

Q Did he say to you anything concerning his dependent children for the years 1967 and '68?

A Yes.

THE COURT: At this point now, I would assume that they read to him all of his Constitutional rights. Did you tell him that he had a right to remain silent, that he didn't have to answer any questions?

A Yes, he would have.

THE COURT: You say "he would have." I am asking whether you had?

A Yes. He was advised of that right.

THE COURT: How do you know?

A Because I recall it.

THE COURT: You've got your recollection, your signature, down there, haven't you?

A Yes, I do.

THE COURT: What does it say?

A "I also advise you that anything which you say and any information that you say may be used against you in any criminal proceedings. I advise you further you may, if you wish, seek the assistance of an attorney before responding."

THE COURT: Did you tell him that if he couldn't afford a lawyer and he wanted a lawyer that the court would assign a lawyer to him without expense to him?

A No, I did not.

THE COURT: Did you tell him that he had the right to remain silent at all times?

A Could I refresh my memory for a moment here?

THE COURT: Yes.

A This is the statement we made in that reference --

THE COURT: I know that is the statement. That has been read already.

Q In addition to that statement, would you advise him of rights any other way?

THE COURT: You say "would you have." You are suggesting it to him.

Q I'm sorry, Your Honor.

Did you?

THE COURT: We are trying to find out what happened, not what might have happened.

MR. WELCH: Right.

THE WITNESS: I cannot recall.

Q So far as you recollect, the entire advice of rights that was given to Mr. Vispi on that day was what is incorporated in the quotation marks on Government's Exhibit 7?

A That is correct.

THE COURT: I will change my ruling in that respect, then, and I won't receive that in evidence, because manifestly, that is not a complete recital of a person's

Constitutional rights.

Q After that statement was read to Mr. Vispi, you indicated a personal history was taken from him, and I ask you, did he advise you of anything concerning his dependent children?

A That is correct.

Q How many dependent children did he tell you he had for 1967?

A Could I use that document to refresh my memory?

Q Do you have any recollection now?

A Not off-hand. I would have to say, "No."

Q What, if anything, was said concerning his filing or failure to file timely income tax returns for '67 and '68?

A Yes. Mr. Francis asked him if there was any reason, or what the reasons were, for his not filing, and he stated that as an attorney, he knew he should have filed the return, that he really had no valid reasons, although there were some health and financial factors involved as well. But he said that he realized that all people have problems, and he should have filed the returns for both of those years.

Q Was anything discussed concerning his records for those

tax years?

A Yes.

Q What did he say to you in that regard?

A To the best of my recollection, he said that he had complete records for '68 and fairly complete records for 1967, although some of those records had been lost, I believe, in his move from Hotel Statler to his new office.

Q Directing your attention to January 21st, 1970, did you have occasion to see Mr. Vispi on that day?

A Yes, I did.

Q Where was that?

A At the Intelligence Division Office.

Q What took place that day?

A Mr. Vispi came in with his tax returns.

Q For what years?

A 1967 and 1968.

Q I'm handing you what has been received as G-3 and G-5 and ask you are those the returns that you gave you that day?

A They weren't given to me.

Q To whom were they given?

A Special Agent Francis.

Q Were you there? Did you see that?

A I didn't see him actually handing the returns over to Special Agent Francis, no.

Q What is the source of your knowledge that he handed it to Special Agent Francis?

A Because Special Agent Francis told me he was going to be getting the returns.

MR. MOOT: I'm going to object and ask the question and answer be stricken in this regard.

THE COURT: I will sustain the objection.

Q On January 20th, 1970, did you have occasion to meet with Mr. Vispi?

A Yes, I did.

Q On that day did Mr. Vispi say anything in regard to the filing of the '67 and '68 returns, that you heard him say?

A He said that the returns had been prepared, and he was going to file them, either the 20th or the 21st.

Q On January 21st, 1970, did you see G-5 and G-3?

A Yes, I did.

Q Where did you see them?

A At the Intelligence Division Office at the Internal Revenue.

MR. WELCH: I have no further questions.

CROSS EXAMINATION

BY MR. MOOT:

Q Mr. Pardi, did you receive a subpoena to bring certain documents and papers with you here from the defendant?

A Yes, I did.

Q Did you assemble those papers before you came?

A I received the subpoena this morning, I would say, about nine thirty, and I brought whatever papers I had from Buffalo, I brought with me. For example, some of those requested items, I have no access to, or I do not have available, such as the Special Agent's Handbook, but other than that, I have complied.

Q Do you have the subpoena with you?

A No, I do not. I might have left it at the office. I'm not certain.

THE COURT: When did you get the subpoena?

A This morning -- I would say nine thirty.

THE COURT: Nine thirty?

A Yes.

THE COURT: The court was scheduled to start at ten, and that wouldn't even have given you time to get to Rochester.

A No. I was the witness for the prosecution, so I was here. I was here and I received it at nine thirty here from Marshal King, I believe.

THE COURT: In this building?

A That's correct.

THE COURT: And you submitted here, assembled, what you had available?

A Yes, right.

MR. MOOT: Your Honor, for the record, these subpoenas were given to the Marshal on October 21st and discussed with Mr. Welch on that date.

THE COURT: There is no evidence here when the Marshal served him. I don't know when he served him.

Q When, in fact, Mr. Pardi, were you served?

A When was I served?

Q Yes.

A I can't be certain of the hour. It was between nine and

nine thirty this morning.

THE COURT: I will see that you get the papers. The point is I thought it was a short time for him to assemble them.

MR. MOOT: I understand, and that is why I made the offer of proof that the Government was advised of the papers on the 21st at the time I gave the subpoena to the Marshal. I appreciate that the Marshal may not be able to get the agents instantaneously, but I believe he did serve some of the agents in the Buffalo office on the same day. I'm not certain. I haven't gotten the return of the service yet. But I read the documents, which I requested which were in the subpoena, to Mr. Welch at the time I gave them to the Marshal so there would be ample opportunity to have them here for the trial.

THE COURT: Go through them one by one. Maybe they are all available now.

MR. MOOT: May I have this marked for identification?

(Defendant's Exhibit 2 marked for identification.)

Q I'm showing you D-2 for identification, which is a copy of a subpoena. Is that the copy of the subpoena with which you were served?

A I believe so, yes.

THE COURT: You have had an opportunity to look at this, Mr. United States Attorney?

MR. WELCH: Not this subpoena. Mr. Moot did advise me that he was sending the subpoena to be served on these agents.

THE COURT: He didn't look at it?

MR. WELCH: And he read to me the text of it, Your Honor. I am taking it on his word. I have not read the subpoena, but I don't have any reason to doubt that is the text of the subpoena. I have no reason to challenge that.

THE COURT: All right.

Q Among the items requested in the subpoena was that you bring with you memorandums of all interviews with the defendant. Do you recall that item?

A Yes.

Q The second item was your personal log, showing the dates and times you worked on his file. Do you recall that item?

A Yes.

Q Did you keep such a log?

A Yes, I did.

Q Is it still available?

A Yes, it is.

Q Is it here in the courtroom?

A Yes, it is.

Q And the next item was your Special Agent's Handbook, and I take it you have none because you are a Revenue Agent?

A That's correct.

Q And the next was the regulations, and all regulations pertaining to the investigation. Do you have a book, or something else, which gives regulations on how these investigations are to be done?

A No, I do not.

Q I overlooked asking you whether the memorandum of all interviews is available?

A In my position as a Revenue Agent, I do not prepare a

memorandum such as the Special Agents have, similar to the type prepared by the Special Agents, so there is no such memorandums.

Q So the three documents which were asked for, the only one which is here in the courtroom, which you can produce, is your log book showing the date and when you met with the taxpayer on the different occasions, is that correct?

A That is correct.

MR. MOOT: Your Honor, I would like an opportunity to examine that document before proceeding with the cross examination.

THE COURT: He said there isn't any.

MR. MOOT: I think he said that he does have a log book, and it is here, am I right?

A That's right. It is not a log book, per se. It is an activity record.

THE COURT: Who keeps it?

A The Revenue Agent does. It is just a time sheet, how I charge my time --

THE COURT: All right. You are entitled to see it.

Recess.

THE WITNESS: Could I ask you a question? Are you referring to before the examination or subsequent?

MR. MOOT: For the entire period of your contact with this taxpayer.

THE WITNESS: Okay.

(Pause in the proceedings.)

MR. MOOT: Would you mark these for identification?

(Defendant's Exhibits 3 and 4 marked for identification.)

THE COURT: We will recess now.

MR. MOOT: I think it will be a good idea, Your Honor.

THE COURT: And you can work out some of these things with the United States Attorney. We will recess until two o'clock.

(Recess from 11:30 a.m. to 2:00 p.m.)

- - -

Rochester, New York

Thursday, October 23, 1975

2:00 P.M.

- - -

(Trial resumed.)

MR. MOOT: If Your Honor please, with permission from counsel for the Government, I would like to take a character witness out of order, as the witness will not be available tomorrow or next week.

THE COURT: All right.

F R E D E R I C K M. M A R S H A L L,

called as a witness by the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOOT:

Q Can you tell us what your present position or job is?

A I am a Justice of the Supreme Court, State of New York. I am Administrative Judge for the Eighth District.

Q Are you sitting in that capacity in the City of Buffalo at the present time, and have you been since your appointment?

A I am, sir.

Q Are you appearing here in response to a subpoena served upon you on behalf of the defendant, Mr. Joseph Vispi?

A Yes, sir.

Q Can you tell us, Judge Marshall, how long you have known the defendant in this case, Mr. Vispi?

A Upwards of thirty years.

Q And what is the nature of your association with Mr. Vispi?

A Classmates, social friends, business, and he at one time was my Confidential Law Assistant.

Q If you can say very briefly, what is the position of Confidential Law Assistant? What does that involve?

A He was required to prepare memorandums of law, prepare rough drafts of decisions and to generally do those confidential tasks which I would appoint to him, such as drafting some letters, on occasion. Generally, that was the work.

Q What was the period of time which he served as Confidential Law Assistant to you while you were serving as Judge of the Supreme Court of the State of New York?

A From July, 1972, until December, 1974.

Q During that period of time in the capacity in which he

served, would he be privy to your decision on matters between parties before it was announced to either of the parties or to their clients?

A Many, sir.

Q And in that respect, part of his job required him to absolutely protect the confidentiality of that information, no matter what?

A Yes, sir.

Q I'm going to ask you about certain organizations and ask you if you are familiar, generally, with or know people or members of these organizations in the community in which you and Mr. Vispi lived, the Republican Party, and do you know members of the Republican Party, prominent Republicans in the area?

A I do, sir.

Q Are you familiar with the Chairmen's Club, which is a part of that organization?

A I am, sir.

Q And you know people who are members of the Chairmen's Club of the Republican Party in Erie County?

A Yes, sir.

Q I ask you with respect to the Erie County Bar Association, have you ever served in any capacity of the Erie

Bar Association?

A I have served on committees, and chairman of committees.

Q Can you tell me whether or not you are aware that the defendant in this case served as a director of the Erie Bar Association?

A He did, with distinction.

Q And do you know any other members of the Erie Bar Association that you had an opportunity to meet with and converse with who were also directors and leaders in the Bar Association in Erie County?

A Many of them, sir.

Q Are you familiar with the organization called The Lawyers' Club in the City of Buffalo?

A I am, sir.

Q Have you served in any capacity in that club?

A Just as a member.

Q Are you aware that Mr. Vispi served as an officer of The Lawyers' Club as well?

A He was a President, as I recall it.

Q Are you familiar with an organization called the Justinian Lawyers?

A I am, sir.

Q Do you know members there who also know Mr. Vispi?

A Yes, sir.

Q Do you know a Justice Catalano?

A Justice Catalano was a colleague of mine on the Supreme Court Bench, who recommended Mr. Vispi to me when Justice Catalano left the bench.

Q And had Mr. Vispi served as Confidential Clerk to Justice Catalano before he came to you?

A For many years, sir.

Q In part, did you rely upon his recommendation when you hired him?

A I certainly did.

Q Are you generally familiar with people who have played prominent roles in the United Fund, Catholic Charities and the Boys' Town of Italy in your community?

A I am, sir.

Q Do you know members who worked in those capacities who are familiar with the defendant in this case and know Mr. Joseph Vispi?

A Yes, sir.

Q Then from these mutual associations and from the speech of citizens in the community, have you had an opportunity to hear the reputation the defendant, Joseph Vispi, enjoys for honesty, truthfulness and being a law-abiding

citizen in the speech of the people of the community in which the two of you live?

A I do have an opinion.

Q What is that opinion?

A Excellent.

Q Were you aware during the period of Mr. Vispi's employment as Confidential Clerk that an Information had been filed against him, charging a misdeamor of a wilfull failure to file income tax returns for the years '67 and '68 on time?

A He came in and volunteered that information to me.

Q And did you have an opportunity to become familiar with the speech of persons in the community which we have described for the reputation of the defendant in this case for honesty and truthfulness and being a law-abiding citizen following that event?

A I do, sir.

Q And what was the reputation of the defendant following the return of the Information with respect to truthfulness, honesty and law-abiding citizen, as you heard it in the speech of the community?

A It remains excellent to this day.

MR. MOOT: Thank you. You may ask.

THE WITNESS: Thank you, Judge.

(Witness excused.)

MR. MOOT: Your Honor, I'm not sure about what the rule is for separation of witnesses. I just want to make sure that Agent Pasquarella is not in the courtroom at this time.

MR. WELCH: No, he is not.

THE COURT: I don't understand.

MR. MOOT: I am asking for a separation of witnesses, and I'm not sure if has been ordered, and I want to make sure that --

THE COURT: I know it hasn't been ordered. It hasn't been asked for.

MR. MOOT: I do want a separation of witnesses with respect to this witness and Agent Pasquarella. They were both present on several occasions.

THE COURT: All right, it is so ordered.

D O M I N I C K M. P A R D I,

called as a witness by the Government, having been previously

Dominick M. Pardi, recalled for Government, Cross.

duly sworn, testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q I understand from your direct testimony, Mr. Pardi, that you are a Revenue Agent ordinarily assigned to civil matters in the form of routine audit or determining the amount of tax due in civil matters, is that correct?

A Yes, it is.

Q And that you began your duties in that capacity with respect to the taxpayer, Mr. Vispi, on April 22nd, 1969, and continued in that civil capacity until November of the same year, is that correct?

A That is correct.

Q And you have furnished me with two Exhibits for identification, D-3 and D-4, and these are your activity records, are they?

A Yes, they are.

Q And those are completed in your handwriting?

A Yes.

MR. MOOT: I will offer these two in evidence.

MR. WELCH: I have no objection.

THE COURT: They are received.

Dominick M. Pardi, recalled for Government, Cross.

(Defendant's Exhibits 3 and 4 marked in evidence.)

Q Mr. Pardi, the first of these Exhibits, D-3, does that cover your activity with respect to the taxpayer, Joseph Vispi, for the period April 22nd to October 23rd, 1969?

A Yes, it does.

Q And the second sheet of papers, D-4, is a Xerox copy of your Activity Report from October 28th, '69, to November 17, 1970, is that correct?

A That is correct.

Q Both of these are in your handwriting. Can you say whether it was your custom and practice to make those entries on the dates shown?

A Yes. They are both in my handwriting, and normally, the entries are made on the day of the activity.

Q Referring to those two Exhibits, Mr. Pardi, it shows, does it not, that you contacted the taxpayer between the period April, '69, and November of '69, when the matter was referred to the Criminal, or the Intelligence Section, a total of eight times?

A No, that is not necessarily true.

Q Give me the number of times.

A That I had contacts with Mr. Vispi?

Dominick M. Pardi, recalled for Government, Cross.

Q Right, between April 22nd, '69, and November 5th, '69?

A Well, this indicates at least five, although I am sure there were more contacts than that, and these include -- I'm sorry. You are talking on this one here (indicating). Can I explain this to you?

Q Just a moment. I just want the question answered first, please.

From April 22nd to November the 5th, '69?

THE COURT: Now what does that mean, "contact"? Right him a letter? Telephone him or talk to him in person?

MR. MOOT: Saw the taxpayer or telephone, spoke with him one way or another.

THE WITNESS: I'm not certain of the number of times I contacted Mr. Vispi between that period because this, generally, is used only to indicate times which I charged hours when I was working on that case and charged my time to working on that case. For example, I might have had a telephone call with him, a conversation, and then that might have been my only activity on that case that day, and I would

not have charged any time to that case.

Q Referring to the time charged and the entries made, and we will confine ourselves to what appears on the Activity Report, D-3, does that show between April 22nd, '69, and October 23rd, '69, a total of twenty-five hours?

THE COURT: That involves a matter of computation. If that is on the Exhibit, and it can be computed, there is no necessity for the witness to do it here.

MR. MOOT: I will say, Your Honor, that it does, and I would like to describe for Your Honor the number of entries made during that period, which is eight.

THE COURT: Introduce the Exhibit in evidence, and it will show.

MR. MOOT: It is in evidence. In order to conduct the examination, I want to lead to another question, so I want the Court to be familiar with what it does show.

It shows eight entries, beginning April 22nd to October 23rd for a total of twenty-five hours, and I have given that

correctly, have I not, Mr. Pardi?

A Yes, it does.

Q Referring to that Exhibit, if you will, and your own recollection of events where you did not make an entry but you did either telephone Mr. Vispi or see him sometime during that period, it's true, is it not, that on repeated occasions he promised to bring in records or promised to do something else and then either delayed or postponed it and did not show up, is that not so?

A Yes, that is true.

Q On repeated occasions during that period he promised to bring in the 1967 and 1968 returns, did he not?

A Well, for a period --

Q Just answer the question, please.

A Could you clarify that question, please?

Q Does the Exhibit show there, and does your recollection confirm that on repeated occasions during that period from April, 1969, until the last entry, October, 1969, the taxpayer promised to bring in the '67 and '68 returns, is that not so?

A Well, it is so for part of the period and it is not so for part of the period.

Q There are repeated entries to that effect, are there not?

A There is an entry on September 24th.

THE COURT: The exact entry would show whether it was or not?

A No, it would not.

Q Well, in your direct testimony, I believe you said it was your recollection that when you first met the taxpayer and spoke with him was April 22nd, 1969, is that correct?

A That is correct.

Q I think you said it was your recollection at that time, or whatever, that at that time, the very first time you saw him, he said that he had filed '67 and '68 returns?

A That is correct.

Q Is there any notation of that effect opposite that entry on that chart?

A No.

Q Now you did say, did you not, that on September 24th, 1969, the taxpayer told you he had not filed the '67 and '68 returns, did you not?

A That is correct.

Q Isn't it a fact, Mr. Pardi, that on a daily log, or Activity Report, which you kept in your hand, written out, that the very first entry of any kind relating

to the '67 and '68 return, was the September 24th entry which you previously said he told you he had not filed, isn't that so?

A Yes, sir.

Q You've got no entry or no reference to the '67 and '68 returns prior to the date which you said he told you he had not filed them, is that not right?

A That is correct.

Q And thereafter, after that date, you asked for these reports from time to time?

A That is correct.

Q And you were put off and delayed?

A That is correct.

Q And repeated telephone calls otherwise?

A That is correct.

Q It was a question of promises and promises, but they didn't produce, is that so?

A That is correct.

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 5 marked for identification.)

Q Do you recognize your signature on D-5?

A Yes, I do.

MR. MOOT: I will offer it in evidence.

MR. WELCH: The Government has no objection, Your Honor.

THE COURT: Some of these Exhibits were entered informally. Where does D-1 and D-2 come in?

MR. MOOT: D-1 was for identification only.

THE COURT: It is an Exhibit, then?

MR. MOOT: It is the excerpt from the Commissioner's Report.

THE COURT: What is D-2?

MR. MOOT: D-2 is the copy of the subpoena on the witness Pardi. It is also for identification only.

D-3 is the first part of the Activity Report, which is now in evidence, and which the witness is testifying from. That is his daily log for the first period.

THE COURT: That is in evidence?

MR. MOOT: Yes, Your Honor. D-4

is the balance of the witness' activity log, and that is also in evidence.

(Defendant's Exhibit 5 marked in evidence.)

MR. MOOT: And D-5 has just been marked in evidence. I'm going to identify it and read from it for Your Honor.

Reading from Exhibit D-5 in evidence, it is a letter on the District Director of Internal Revenue Service letterhead, dated October 6, 1969, addressed to Mr. Joseph Vispi and signed by Mr. Dominick Pardi, the present witness.

I will read the whole letter. It is very short, Your Honor.

"Dear Mr. Vispi:

"I find it impossible to hold open the audit of your '65 and '66 tax returns any longer. If substantiation is not provided for the following matters by October 16, 1969, I will find it necessary to disallow the deductions and assess the necessary tax on them. If a meeting is arranged

between now and the 16th, I would be interested in seeing your '67 and '68 returns.

The items needing substantiation for '65 and '66 are as follows:"

And they are in the letter, and I don't believe it is pertinent to read them, Your Honor.

The letter concludes: "If you care to contact me, I can be reached at Telephone Number and address as given."

Mr. Pardi, you dictated this letter?

A Yes, I did.

Q And that is October 6, 1969?

A That is correct.

Q And you previously just finished telling us that the only entry in your Activity Report with respect to the filing or not filing of the '67 and '68 returns was not until September 24th, is that correct?

A That is correct.

Q That is the date where you have already told us Mr. Vispi told you they were not filed, isn't that so?

A Yes, sir.

Q Surely, there is no mention in this letter of October

6th, 1969, that he had in any way been untruthful with respect to the filing of these returns, is there?

A I requested that I be provided with copies of those returns.

Q But you make no reference there in your testimony that you gave on direct examination that he had filed when he had not filed, do you?

A No. On September 24th he told me that he would be filing and he would be providing me copies of those returns, so I worked under the presumption that they would have been filed in the period in between.

Q I want to read from D-3, your Activity Report, the entry you made on April 22nd in your own hand with respect to this meeting that you now claim the witness told you he had filed the returns.

A Yes.

Q It says, "Needs more information. Call later." Is that correct?

A That is correct.

Q Not a word about 1967 and '68 returns?

A That is correct.

Q Now I want to read the entry for September 24th: "Mr. Vispi, two hours. Needs '67 and '68 return. Gave one

more week."

Correct?

A That is correct.

Q That is the first entry you've got with respect to the '67 and '68 returns, is it not?

A That is correct.

Q And that is the day when he told you he hadn't file them, is it?

A That is correct.

Q After that the next written record we had with respect to that, that you dictated, is this letter of October 6, is that correct?

A That is correct.

Q In which you said, "I would be interested in seeing your '67 and '68 returns"?

A That is correct.

Q Referring to the entry of October 7th, and I'm reading it, "Mr. Vispi --," and there are brackets --

A "Per phone call."

Q "Per phone," it sa[illegible]

A Right.

Q "Told him of letter I sent to him."

Is D-5 that letter?

Dominick M. Pardi, recalled for Government, Cross.

A I would presume so, yes.

Q Did you tell him at one time that if he could not prepare and file a '67 return, you would have to refer the matter to the Intelligence Section?

A No.

Q What did you say to him?

A What did I say in regard to filing '67 and '68?

Q Yes, after he told you he hadn't filed them September 24th. What did you say?

A Well, he said that he knew he should file the return.

Q I didn't ask you, Mr. Pardi, what he said. I asked what you said.

A I said that when he does file the returns, that he could either file them with myself or he could file them with the Service Center or that he could file them with the Buffalo District. He could do that.

Q Isn't it a fact you also wrote another letter to him with respect to filing those returns, in addition to the D-5 letter of October 6th?

A I cannot recall.

Q Have you made a search of all of your correspondence with Mr. Vispi before you testified here?

A Yes, I did.

Q Is the copy of the letter of October 6th in that file?

A I believe it is.

MR. MOOT: Would you step down and see if you can find it, please?

(Witness leaves stand.)

(Pause in the proceedings.)

(Witness resumes stand.)

MR. MOOT: May I have them marked for identification, please?

MR. WELCH: Objection, Your Honor. I have no idea what the rest of this document is.

THE COURT: A good way to find out is to look at it.

MR. WELCH: I would request permission to review it before it is even taken from the Agent, Your Honor.

THE COURT: Anybody can identify any document at any time in the case.

MR. WELCH: I have no idea whether this information is privileged information that he is authorized to disclose.

THE COURT: Look at it, and you

probably can find out.

If he marks it for identification, that doesn't mean that it will ever go in evidence.

MR. MOOT: May we first have it marked, please?

(Defendant's Exhibit 6 marked for identification.)

MR. MOOT: I'm not offering it in evidence, nor am I examining it. I would like to have D-6 returned to the witness, please.

MR. WELCH: May I have just a moment to review this, Your Honor?

THE COURT: Yes.

(Pause in the proceedings.)

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q Mr. Pardi, are there copies of any other letters in D-6 from you to the taxpayer?

A No, sir, there is not.

Q When you left the stand to find D-6, did you examine the rest of your file to determine whether any copies of any

other letters were written by you to the taxpayer?

A No, I did not.

Q Would you do that, please?

A Surely. (Witness leaves stand.)

(Pause in the proceedings.)

(Witness resumes stand.)

Q Have you been able to find copies of any other letters whatsoever?

A No. There is no letter from me. There is no letter in there, in the file, but there is a possibility --

Q You said, "There is a possibility --" of what?

A When the report was sent to Mr. Vispi, there might have been a letter affixed to it.

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 7 marked for identification.)

Q Mr. Pardi, I'm showing you G-1 and G-2, and these are the tax returns produced by the Government, of the defendant, Mr. Vispi and his wife for the two years, and they are both stamped, as explained by an earlier witness, as "Received, April 18, 1968." Did you have occasion to work with those returns during the process of your audit?

A Yes, I did.

Q And in the course of your audit, were you able to determine the reason why those returns were marked "Filed" on April 18, 1968?

A That is when those returns were received with the District Director. Are you saying what do these stamps mean? Yes, these returns were filed delinquently.

Q Did you determine whether they were filed delinquently, or whether an extension had been granted to that date?

A An extension to that date would have been impossible.

Q Did you make any check to see whether there had been an extension granted?

A No, I did not make a check --

Q Just answer the question, and we will go faster, Mr. Pardi.

Did you make any check to determine whether an extension had been granted for those two years?

A No, I did not.

Q Were you in any way directed to make inquiry as to why the returns were marked "filed" on '68, '66 and '65 returns?

A Was I directed to?

Q Yes.

A Did someone tell me to, is that what you are saying?

Dominick M. Pardi, recalled for Government, Cross.

Q Exactly.

A No.

Q Did you ever discuss it with the taxpayer as to why they were filed on that day?

A Yes, I did.

Q What did he say?

A He said that he had ill health and financial problems.

Q Are you referring now to the '67 return or '68 return?

A I'm referring to '65 and '66.

Q Are there any notations in your Activity Record with respect to such conversation at all?

A No, there is not.

Q At any time did you write a report with respect to the referral of '65 and '66 to the Intelligence Division for a possible criminal action?

A I did not refer these cases to the Intelligence Division.

Q Were you satisfied, then, that a valid reason existed for them being filed late?

A No. These returns were received by me as being delinquent returns.

Q In any event, you made no recommendation with respect to possible criminal action for those years, did you?

A That was not my capacity to do.

Dominick M. Pardi, recalled for Government, Cross.

Q You did for '67 and '68?

A That is correct.

Q Isn't it a fact, Mr. Pardi, that you told Mr. Vispi that you couldn't wait much longer for the '67 and '68 returns, and if he didn't file them, you were going to refer it to the Intelligence Section?

A No, that is not a fact.

Q Isn't it a fact that the reason you referred it to the Intelligence Section was because you were exasperated with constant delays that Mr. Vispi was causing you?

A No. That is not a fact.

Q No question about the repeated delays in both the information you were asking with respect to the audit and for the filing of the '67 and '68 returns? That's correct, is it not?

A Could I have a clarification there, please?

Q I will make the question simpler. It is a fact, is it not, before you referred this to the Intelligence Section, Mr. Vispi had delayed you again and again on your audit for '65 and '66?

A That is correct.

Q And he would make a promise to bring something in, and then he would make a call to delay it, is that so?

Dominick M. Pardi, recalled for Government, Cross.

A That is correct.

Q I think in one place it shows six or seven phone calls delaying the appointment again and again, is that right?

A That is correct.

Q And this was for information on a return which he was being audited on, is that not so?

A That is correct.

Q Certainly, he knew that he would have to give you that information in the end, didn't he?

A I would presume so.

Q And he had the same experience with your request for him to file the '67 and '68 returns, promises, but no performance, is that not so?

A That is so.

Q And finally, you told him, didn't you, if he didn't do it you would have to refer it to the Intelligence Section, did you not?

A Never.

Q Well, the fact of it is with respect to '65 and '66, you completed that audit, did you not?

A Yes, I did.

Q And that resulted in a civil tax adjustment, did it?

A Yes, it did.

Dominick M. Pardi, recalled for Government, Cross.

Q Do you recall the dollar amount of that?

A No, I do not.

Q Is that your signature on D-7 for identification?

A Yes, it is.

MR. MOOT: I will offer it in evidence.

MR. WELCH: I object, Your Honor, on the grounds that it is irrelevant to the issues before Your Honor.

THE COURT: Objection is overruled.

(Defendant's Exhibit 7 marked in evidence.)

THE COURT: What year does this refer to?

MR. MOOT: This is the audit, Your Honor, for 1967 and 1966.

THE COURT: We have been talking about all these years together here.

MR. MOOT: Right.

Q I'm showing you D-7, and this is your final report on the audit for '65 and '66, is it not?

A Yes, it is.

Q This is the end report with respect to '65 and '66, is

it not?

A Yes. That is the Revenue Agent's report.

Q That is your report, isn't it?

A Yes.

Q This is your end work product after all of these meetings and the time spent with respect to '65 and '66, am I right?

A That is correct.

Q And that shows the penalty, if any, with respect to these two years, for the year '65, $254.41, is that correct?

A His penalty, yes.

Q And it shows a deficiency in tax of a thousand odd dollars in that year?

A That is correct.

Q And for the year 1966 it shows a penalty of $183.22?

A That is correct.

Q And a deficiency in tax for that year of seven hundred odd dollars?

A That is correct.

Q There is nothing in this final report about any type of penalty or proceeding with respect to the return not being timely, is there?

A Are you talking about '67 and '68?

Q '65 and '66.

A That is what that penalty applies to.

Q So that he had a civil penalty by reason of the '65 and '66 returns being late in the dollar amount I just read?

A That is correct.

Q Did you ever make a search of the District Director's office to see if Mr. Vispi had, in fact, applied for an extension of time to file his '67 or '68 return?

A Did I ever make one?

Q Yes.

A No, I did not.

Q So you can't say whether he ever attempted to get more time for the year 1967?

THE COURT: Did you ask somebody else to do it?

THE WITNESS: Are you talking about when I was doing '65 and '66 years?

Q No. I'm talking about whether you made any effort to determine whether the defendant, Mr. Vispi, had applied for additional time to file his '67 or '68 return?

A Did I ever make an effort towards that? No, I did not.

Q You had no knowledge whatsoever with respect to the years 1967 and 1968 as to whether the taxpayer had asked for

more time to file those returns, do you?

A Do I have it now, or did I have it then?

Q Did you have it then?

A No, I did not.

Q At the time you referred the matter to the Intelligence Section for wilfull failure to file, and an investigation as a possible misdemeanor, you had made no attempt to determine whether the taxpayer had filed an application for additional time?

A That is correct.

Q You, in fact, now know that he did make application for the year 1967 and was refused, do you not?

A No, I do not.

Q Do you, in fact, know that later on he made application for both years, '67 and '68, and that was refused?

A Do I know that in fact?

Q Yes.

A No, I do not.

Q To this day?

A No, I do not.

Q Mr. Pardi, in what manner have you assisted in the preparation of this case for trial?

A (No response.)

Dominick M. Pardi, recalled for Government, Cross.

Q Have you conferred with the United States Attorney with respect to witnesses or documents?

A With respect to witnesses?

Q Yes.

A No.

Q With respect to documents?

A Yes. We went over my file.

Q So you only went over that portion of the case that concerned you individually, is that correct?

A I was there during conversations with the Special Agent.

Q Was it Special Agent Pasquarella that prepared the list of witnesses to be subpoenaed for this case?

A I had no knowledge of that.

Q You did not participate in that?

A No.

Q Did you participate in any way with the preparation of this case at the time the Information was prepared and filed in February, 1974?

A I would have prepared a Revenue Agent's Report, which might accompany the case, but relative to the criminal aspects of the case, I participated in no way.

Q I'm showing you D-4, and this is your Activity Report, and it shows, does it not, on January 21st, 1970 -- and

I am reading -"POD," what is that?

A "Post of Duty."

Q What does that mean?

A That means I was in the office, right.

Q Eight hours?

A That is correct.

Q And it reads, "Vispi brought in delinquent returns. Scrutinized these. Eight hours." Is that right?

A That is correct.

No -- wait. Are you saying that I worked eight hours in scrutinizing the returns?

Q And worked on checks?

A Right.

Q Okay. I forgot to read the next line. Thank you.

And these returns that this entry on January 21st, 1970, refers to are the '67 and '68 returns, are they not?

A Yes.

Q Did you at any time participate in discussions which resulted in filing the Information four years later in February, 1974?

A I don't know what information is filed, so I don't know --

Q I'm just asking if you were consulted, or participated, in the preparation of the Information in February, '74, four years after returns were brought in?

A Inasmuch as I don't know what information you are referring to, I would have to say "No."

Q Did you ever see the Information before it was filed?

A I don't know what information it is.

THE COURT: You are talking about the Information filed in this case?

MR. MOOT: Yes, Your Honor.

THE COURT: Show it to him

Q I understand now why the witness was confused. He didn't understand the word "Information."

By "Information," I refer to the charge on which this case was brought, the official charge, like an Indictment.

A Did I work on an indictment-type situation?

Q Yes.

A No, not in any way at all.

Q Were you consulted with it in any respect between the time January 21, '70, to February 1, 1974?

A I probably provided accounting work towards that.

MR. MOOT: Would you mark this for

identification?

(Defendant's Exhibit 8 marked for identification.)

MR. MOOT: This is a copy of the Information filed February 1, '74, and I assume there is no objection to it going in evidence.

MR. WELCH: No objection.

(Defendant's Exhibit 8 marked in evidence.)

Q I apologize, Mr. Pardi, for not making clear what I meant by "Information." This is the Information, or the charge, in which this prosecution is based. It shows it was filed February 4th, 1974, more than four years after you had the '67 and '68 returns in your custody. Have you ever seen this before?

A I believe there is one in the file, although I have never read it.

Q Did you see that any time before February 1st, '74, when it was filed?

A No, definitely not.

Q Were you in any way consulted with respect to the language laid in this charge, and I am reading from the Exhibit,

in which it is charged that he, the defendant, "did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States."

Were you ever consulted with respect to that?

A In no way.

Q In fact, he did make the return four years before the date of this charge, didn't he?

A I would have to look at it. I don't know when this was filed.

Q This was filed, as I said before, February 1st, 1974.

A Yes. He filed the returns January 21st, 1970.

Q Well, examine that first Count of that Information and see if that paper which laid the charge, which is occupying the time of the Court and you at the present time, is there any reference whatsoever to the fact that he had filed the returns four years before?

A No, there is not.

Q You work out of the Buffalo Office?

A Yes, I do.

Q And are there regulations in the Buffalo Office with

respect to the release of information to the public news media or the press?

A Yes, there are.

Q Is that handled by a public relations, or a public information person in that office?

A Are you talking about the limitations on the information that is released?

Q Yes. Wasn't there one person designated to release that information?

A Press releases and so forth?

Q Yes.

A It is my understanding there is, yes.

Q Do you know who that person is?

A The person who releases press releases --

THE COURT: First, there are regulations on file in writing, I suppose?

A You are going to have to clarify the question. Are you saying --

THE COURT: I'm asking it now. Are there regulations, written regulations on file, regulating the dissemination of information to the public?

A Are you talking in reference to limiting it, the dis-

closure, for example?

THE COURT: I'm not talking about limiting at all. I'm talking about are there regulations regarding it?

A Regarding tax information, I would have to say yes.

Q Do you know what the regulations are?

THE COURT: He wouldn't be expected to.

Q Do you know in a general way?

A No.

Q There are rules on disclosure. Do you have anything to do with it?

A Do I have anything to do with that?

Q Releasing information to the newspaper?

A Releasing information to the newspaper, no.

Q Do you recall reading the news releases which appeared in the newspaper with respect to this case?

A I saw one clipping, I believe.

Q And can you say from your recollection of reading it whether the information as released reported the whole truth, that the returns had, in fact, been filed?

MR. WELCH: Objection, Your Honor.

THE COURT: I will sustain the

objection unless he has the regulation, release and clippings before him. I can't see how he could possibly answer that question unless he compares the three.

MR. WELCH: May I be heard further, Your Honor?

My objection is that what was disseminated in the news media is irrelevant to the merits, whether this man failed to file --

THE COURT: What was the last question?

MR. MOOT: There is no question pending. The objection was sustained.

(Last question read.)

THE COURT: I interrupted and inferred that I would sustain an objection to that question.

MR. MOOT: I withdraw the question.

MR. WELCH: Thank you.

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 9 marked for

identification.)

Q I'm showing you D-9 for identification. It is a yellow sheet of paper with two newspaper clippings from the local Buffalo papers attached to it.

Do you recall either of those articles as the one which you have just testified to?

A I cannot say I do. No. I'm sure it must have been one of those, but I can't testify to that.

Q Which paper do you regularly read?

A The Buffalo Evening News.

MR. WELCH: May I be heard? I object again. This is all irrelevant.

THE COURT: There isn't any question now for objection. Wait until he asks a question.

Q Do you regularly read the Buffalo Evening News?

MR. WELCH: I object.

THE COURT: I'm sure I will overrule the objection to that.

MR. WELCH: We are wasting Your Honor's time by discussing --

THE COURT: Don't worry about wasting my time I've got a lot of time.

MR. WELCH: It is irrelevant to the issue whether Mr. Pardi reads the Buffalo newspapers.

THE COURT: I should think it would be pretty relevant to it whether an Internal Revenue Agent reads the Buffalo papers. The objection is overruled.

Q You do read the News?

A Yes, I do.

Q And the best that you can recall, does the article there, marked in the Buffalo Evening News of February 2nd, 1974, and that would be the date following the Information, does that jibe with your recollection of the report --

THE COURT: He didn't say that he had any recollection of it at all.

MR. MOOT: I think, Your Honor, earlier he said that he recalled reading about this in the newspaper. Did you not?

A Yes, I did.

Q And does this article, which I'm showing you here now, look like the one you read?

A Yes.

Q Have you had an opportunity to read this?

A The one from the Buffalo Evening News I did read it, yes.

Q You were the agent that referred this matter to the Intelligence Section for consideration of criminal investigation, is that right?

A That is correct.

Q And you were the agent who had in your hands, in your possession, in January of 1970, four years before the date of this newspaper article, the returns of this taxpayer, did you not?

A They were never under my control, at least not at this point.

Q You were examining them, weren't you?

A I was not examining '67 and '68 returns, no.

Q Just one moment.

A The returns were not under my control.

Q You are using "examining" in the sense of a work assignment. I will read you again, "January 21, 1970. At your desk. Place of Duty. Vispi brought in delinquent returns. Scrutinized these."

A That's correct.

Q And the returns refer to 1967 and 1968?

A That is correct.

Q And this was four years before the article you read in

the paper?

A Well, I'm not sure of the date of the article in the paper, but if that was after this, yes, that is true.

THE COURT: The article in the paper has probably got the stamp on it, hasn't it?

MR. MOOT: Unfortunately, it is only penciled on, Your Honor. But there is no doubt about the date, because we have the date that the charge was laid, which was February, 1974, so it is four years, alright.

Now my question to you is, the article as you read it in the paper did not say anything about that the returns, in fact, had been filed, did it?

A No, it does not.

Q Did it strike you odd that a man was being charged with wilfull failure to file a return four years after you had looked at the returns and knew they had been filed?

A No.

Q Do you have the Information there in front of you?

A Yes, I do.

Dominick M. Pardi, recalled for Government, Cross.

Q It doesn't say in there anywhere that he is being charged with wilfully failing to file on time, does it?

A I'm going to have to read it over again.

MR. MOOT: Well, read it. Take your time.

MR. WELCH: Your Honor, I object to this line of questioning. There are cases that construe that Information as properly charging failure to file on time, as we started at the beginning of this hearing, and this is calling for a conclusion of law from this witness --

THE COURT: It doesn't call for any conclusions of law. I certainly won't rely on any statement that he makes about it.

MR. WELCH: Your Honor can examine the Information to determine whether it charges him with failure to file on time.

THE COURT: Of course, I can, but I don't choose to at this time.

MR. WELCH: Thank you, Your Honor.

(Pause in the proceedings.)

Dominick M. Pardi, recalled for Government, Cross.

THE WITNESS: State the question. What am I looking for again, whether it is timely filed?

Q No, whether he is charged with wilfully failing to file on time?

A No.

Q I'm showing you your activity sheet for the balance of the investigation, from October, '69, until, apparently, when you concluded the matter in November, 1970.

By my count, Mr. Pardi, does that activity log show that you assisted the Intelligence Agents assigned to this case, according to the log, on forty-six different days?

A Do you want me to count them?

THE COURT: Don't take the time of the Court to compute that. You can put that in your brief. If you make a miscount, I will call it to your attentic

Q All right. But it is in that neighborhood?

A All right, that I spent that time working on the case, yes.

Q And it does show, in fact, two hundred and thirty-two hours?

Dominick M. Pardi, recalled for Government, Cross.

A Yes. It is right there. It would be two hundred and thirty-seven. There are these five additional hours.

Q I want to ask you about a particular entry, and I read from the Exhibit in evidence, the entry for February 9, 1970, and it reads: "Discuss the case with Special Agent Pasquarella. Reconciling return to research --"

A No. That is "to records."

Q "To records"?

A Yes.

Q Excuse me.

Was that the first/date that Agent Pasquarella was assigned to the case?

A That is probably the first day I had contact with him, although I have no knowledge when he was assigned to the case. Could I just take a look at that, and maybe there might be something earlier? I do not know.

(Pause in the proceedings.)

THE WITNESS: I would say on my recollection that would be the first contact I had with Special Agent Pasquarella on that case.

Q There is an entry on your activity sheet here for September 25th, which I read: "Five hours interview

with J.C.V."

That's Vispi?

A That would be Mr. Vispi.

Q And Mrs. Carter?

A That is correct.

Q Do you know of any records or notes of any kind that were kept with respect to that meeting?

A This is two meetings, two separate meetings.

Q Were there records kept with respect to those two separate meetings?

A I would assume there would have been, yes.

Q Was Agent Pasquarella in charge of those two meetings?

A Yes, he was, to the best of my recollection.

MR. MOOT: I would like to make a request of the Government to produce the memorandum with respect to that meeting. Previously, on our discovery order, we have been furnished with typewritten summaries of various meetings with the taxpayer.

THE COURT: First, the shortest way to get at that is to ask if memorandums were made. I am familiar with the way this is done.

Dominick M. Pardi, recalled for Government, Cross.

Q Were memoranda made with respect to that meeting with Mr. Vispi?

THE COURT: When I say "memorandum," I don't mean any formal memorandum. I mean notes on loose sheets of paper.

THE WITNESS: I have no knowledge of that. There were none taken by myself.

THE COURT: There were none taken by yourself, but if you were there, you would have seen it?

THE WITNESS: I can't recall.

Q Agent Pasquarella was in charge?

A Yes.

Q And when you met on the various occasions with Mr. Vispi with Agent Pasquarella, did Mr. Pasquarella have a pad and paper and make notes as he went along?

A To the best of my recollection, he did, yes.

Q And to the best of your recollection, did he follow that practice on this meeting of September 26th?

A I would say yes. I don't know factually, but I would presume from the others.

Q Then following the meeting those rough notes are used for typewritten summary, and then discarded and destroyed,

is that correct?

A I don't know for a fact that they were destroyed.

THE COURT: You have already testified this morning that that was the practice?

A That I assume that was the practice. I really don't know what they do with them, Your Honor.

MR. MOOT: The reason for my inquiry, Your Honor, is because every other item shown on this, Defendant's Exhibit 4, every other entry on this Activity Report which shows a meeting with the defendant, we have been furnished prior to trial with a typewritten summary of such meeting. But with respect to this one on the 25th, we have been furnished nothing, either rough notes or a summary, and I am laying the foundation --

THE COURT: How did you know there was a meeting, then?

MR. MOOT: Because it says so in the log.

THE COURT: What does it say about it?

MR. MOOT: It says, "On September 25th, 1970, interview with J.C.V." That is the defendant, Mr. Vispi. And everywhere else where that entry appears on this Exhibit, this Activity Report, we have a corresponding typewritten summary, which was produced.

THE COURT: All right.

MR. MOOT: Now I want to ask the Government to produce the summary or whatever they have for this meeting, as well as the others.

THE COURT: Who was the other agent, then, at this instance?

THE WITNESS: The Special Agent was Special Agent Pasquarella.

THE COURT: And that was either at or near the beginning of his assignment with this case?

THE WITNESS: The first contact that I had with Agent Pasquarella that I have documented here is February 9, 1970, and this interview is referred to as

Dominick M. Pardi, recalled for Government, Cross.

September 25th of that year, 1970.

THE COURT: 1970?

A Yes, right.

MR. MOOT: Your Honor, we have summaries prepared and signed by Mr. Pasquarella prior to the date of this meeting, but this one is missing, and that is what I am trying to explore.

MR. WELCH: If Your Honor please, this witness has already testified he has none. Agent Pasquarella will be called to testify. We can establish what the situation is in regard to memos when he testifies. I have provided Mr. Moot all the memos of conference, formal memorandum of conference, that I have, and among them --

THE COURT: He said you didn't produc them.

MR. WELCH: I have none, no formal memorandum of conference. There may be similar entries like these worksheets that I don't have. I'm attempting to locate that now, but as for this witness, he said

there is none.

THE COURT: Let's do it the other way, then.

THE WITNESS: Could I offer this? I'm not certain there was an interview on that date. The fact that I indicated interview does not mean that it might have been a formal situation.

THE COURT: What?

A It might not have been formal. I don't know. I can't recall but it might not have been a prolonged question and answer-type thing.

THE COURT: An interview doesn't necessarily mean a prolonged interview. Sometimes I'm surprised when I hear a lawyer refer to an interview. With me, it means a telephone call. Usually, it is not a long one.

Q The entry for August 28, 1970, reads, "POD (Place of Duty) four hours interview J.C.V," does it not?

A Yes, it does.

Q And that produced a memorandum of interview, did it not?

I believe that is established, Your Honor, by docu-

ments I now have.

A (No response.)

Q You don't know?

A No, I really don't know.

Q Now the entry for September 25th reads, "Five hours." That is an hour more than the other?

A Okay. By way of explanation, those five hours are the time that I charged to that case during that day. That doesn't really mean I spent five hours in that interview.

THE COURT: If Pasquarella is going to be called in here, let's not duplicate this.

Q Am I correct, Mr. Pardi, that your responsibility to this case, following the computation of the additional tax and late filing penalty for '65 and '66, was limited to assisting Mr. Pasquarella or Mr. Francis before him?

A Yes, that's correct.

MR. MOOT: That is all I have.

(Recess from 3:30 p.m. to 3:40 p.m.)

REDIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Pardi, just before the recess, you had gone over with Mr. Moot Defendant's Exhibit 7 in evidence, which

is the income tax audit changes, dated October 23rd, 1969. Is that the audit of Mr. Vispi's 1965 and 1966 returns?

A That is correct.

Q You indicated on there that the delinquency penalty was received on that audit, is that correct?

A That is correct.

Q And where is that?

A On Line 14.

Q Where it says, "Penalties"?

A "Penalties, if any."

And it is Section 6651, which is the Delinquency Penalty.

Q The delinquency for filing late?

A That is correct -- actually, the failure to file penalty.

MR. WELCH: Would you mark this for identification?

(Government's Exhibit 8 marked for identification.)

Q Now when you completed this audit of Mr. Vispi's '65 and '66 return, did you show him the audit changes?

A Yes, I did.

Q And did he dispute those audit changes?

A Well, of course, during the course of the examination we probably discussed these items.

Q I am talking about final --

A You mean was the case agreed or "unagreed"?

Q Yes.

A It was agreed.

THE COURT: What was agreed?

A The deficiency and penalties; the additional tax and the penalties were agreed to.

Q I'm going to hand you G-8 for identification and ask you have you seen that before?

THE COURT: Was there anything on that report of interview that would indicate that he agreed with that?

A On the report specifically?

THE COURT: Yes.

A On this, no, there is not.

THE COURT: It was quite unusual. That is what made me ask the question where a taxpayer and the Government agrees.

THE WITNESS: Actually, to my knowledge, we have many more "agreed" cases than we do "unagreed" cases.

THE COURT: We are still getting plenty of business in here.

THE WITNESS: Well, sure. We have a lot of cases.

Q G-8 that I have just handed you has been marked for identification. Have you seen that before?

A Yes, I have.

Q Did you see that signed?

A Yes. It is signed.

Q By Mr. Vispi?

A Yes, Mr. and Mrs. Vispi both.

MR. MOOT: No objection.

MR. WELCH: The United States offers G-8 in evidence, Your Honor. G-8 purports to be a waiver of restrictions on assessment and collection of deficiency in tax and acceptance of Over-assessment Form No. 870, dated October 22nd, 1969, signed by Joseph C. Vispi and Theresa M. Vispi.

(Government's Exhibit 8 marked in evidence.)

Q Is this the document that establishes that they accepted the penalties assessed on the '65 and '66 returns?

A Yes.

Q Mr. Pardi, you have testified that initially Mr. Vispi told you that he had filed the '67 and '68 returns, is that correct?

A That is correct.

Q And then at some point he told you that he had not filed it?

A That is correct.

Q And in your cross examination, you indicated to Mr. Moot that he had told you that he had not filed them prior to October 6 when you asked him to see copies of them?

A That is correct.

Q Then why did you ask to see copies of them in this October 6th letter?

A When I spoke to Mr. Vispi about the returns, he had informed me that he would be filing them, so I was working under the presumption that they would be filed by that date.

Q On cross examination you were also asked concerning applications for extension of time as to whether you knew any had been filed in regard to the returns you were auditing. Are you aware when an application for

extension of time has to be filed?

A Yes, I am.

Q When does it have to be filed?

A Before the due date of the tax return to which it applies.

Q And if an application for extension of time to file is accepted by the Internal Revenue Service and granted, what is the maximum period of time for which that extension can be granted?

A Except for anyone who is abroad, the maximum s six months.

Q So that during the period of this audit, if Mr. Vispi had asked for and gotten an extension, and that is an "if," and that extension period would have expired at that time, is that correct?

MR. MOOT: I'm going to object to the argumentative questions --

THE COURT: I will sustain the objection.

MR. WELCH: I will withdraw the question, Your Honor.

I have no further questions. Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. MOOT:

Q Mr. Pardi, did you discuss any other matters with Mr. Vispi at you various meetings in addition to what you have told us about so far?

A In reference to tax -- I mean, you know, we might have talked about the weather and so forth.

Q Precisely. Isn't it a fact on occasion that you had asked him for advice in professional matters with respect to buying or selling a house?

A I can't recall that, no. A large part of his business is in real estate. I might have asked him how he transacts these, you know, what his work entailed. If that was the case, I might have been trying to determine what expenses were applicable or so forth.

Q Did either you or the Special Agent in your presence at any time consult him with respect to your personal problems in connection with real estate, for advice in connection with real estate?

A I didn't own any real estate at that time.

Q Did Mr. Pasquarella consult him with respect to how a real estate matter might be handled on his behalf?

A Never in my presence, no.

MR. MOOT: I have no further questions.

(Witness excused.)

MR. WELCH: The United States calls Mr. Joseph L. Enzina.

J O S E P H L. E N Z I N A,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Enzina, tell the Court where you live?

A 159 The Paddock, in Williamsville, New York.

Q Is Williamsville a suburb of Buffalo, New York?

A Yes, it is.

Q Do you know Mr. Joseph Vispi, the defendant in the case here?

A Yes, I do.

Q How long have you known Mr. Vispi?

A Thirty years.

Q In what capacity do you know Mr. Vispi?

A As my friend and my lawyer.

Q As your friend and your lawyer?

A Yes.

Q In that capacity, did he ever have occasion to prepare your income tax returns?

A Yes, he has.

Q How many occasions that you recall?

A The last twenty, twenty-five years.

Q For the years 1967 and '68, did he prepare your income tax returns?

A Yes, he did.

Q And did he prepare them on time?

A Oh, yes, he did.

MR. WELCH: I have no further questions.

CROSS EXAMINATION

BY MR. MOOT:

Q Mr. Enzina, did you give a statement to the Internal Revenue people who had questioned you with respect to Mr. Vispi's case?

A Today?

Q No. I mean did you sign a statement at the time they were talking to you? Did you sign any paper?

A In 1970 I was questioned somewhat on this line, and I signed a paper at that time.

MR. MOOT: May I have a copy?

MR. WELCH: I will present Mr. Moot with a copy of that, Your Honor. It is a five-line statement.

(Pause in the proceedings.)

Q You say, Mr. Enzina, that Mr. Vispi prepared your returns on time, but it is a fact, is it not, that he usually came the last day or the day before the last day of each year?

A Somewhat. That is on time.

Q True. Can you recall how much you paid him for doing your returns? I take it they were for you and your wife?

A Sometimes fifteen dollars, around fifteen dollars.

Q Did you know Mr. Vispi and his wife socially in the neighborhood, as well as being your attorney?

A Yes, I do.

Q Do you know other people who know Mr. Vispi in the community, some of his other friends?

A Yes, quite a bit of people.

Q From your association with Mr. Vispi's friends, are you familiar from the speech of people in the community with his reputation for truthfulness, honesty and a law-abiding citizen?

A Yes.

Q What is his reputation?

A He is rated very high. Everybody loves him and likes him and respects him very much.

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 10 marked for identification.)

Q I'm showing you D-10 for identification, a Xerox copy of a statement. Do you recognize your signature?

A Yes, I do.

Q Is this the 1970 statement to which you referred to in your direct testimony?

A Yes.

MR. MOOT: I will offer it, Your Honor.

MR. WELCH: I object to the offer, Your Honor. The witness has testified, and he is here.

THE COURT: Let me see it.

(Defendant's Exhibit 10 handed to the Court.)

THE COURT: The objection is over-

ruled. I will receive it.

(Defendant's Exhibit 10 marked in evidence.)

Q Can you read that copy of D-10 in evidence alright?

A That's right.

Q And to the best of your recollection, is that true?

A I would say it is true.

Q And it contains the full substance of your conversation with the agent who questioned you?

A That's right.

Q Am I correct, then, Mr. Enzina, that the agent who questioned you at this time in 1970 made no inquiry of you as to why Mr. Vispi would not file his own '67 and '68 returns? He never asked you that question?

A No, no. I never asked him any other reason. He just wanted to know what I knew about him, and that is all I know about it. I didn't know why he was asking me. I didn't ask him.

Q Did he make any inquiry of you with respect to Mr. Vispi's reputation to the speech of people in the community for honesty, truthfulness and being a law-abiding citizen?

A It was quite awhile back, but I am pretty sure he asked

me what kind of a man he is, and I just told him that.

Q What did you tell him?

A The same as I said right now. I know that he is very respectable, and everybody likes him.

Q That doesn't appear on the statement, does it?

A No.

MR. MOOT: I have no further questions of the witness.

(Witness excused.)

MR. WELCH: I will call Mr. Michael Pasquarella.

M I C H A E L A. P A S Q U A R E L L A,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Pasquarella, how are you employed?

A I am a Special Agent with the Internal Revenue Service.

Q For now long have you been so employed?

A Since August of 1967.

Q What are the duties of a Special Agent of the Internal Revenue Service?

A One of my duties is to investigate the possibilities of

criminal violations of the Internal Revenue Code.

Q During the course of your duties in that connection, did you have occasion to conduct an investigation of one Joseph Vispi?

A Yes, I did.

Q When did you receive that case?

A I was assigned the investigation on January 26th, 1970.

Q When did you first meet with Mr. Vispi?

A I met Mr. Vispi on February 13th of 1970 when he appeared at our office to ask for a file that he had previously submitted to Special Agent Francis.

Q And do you know where Special Agent Francis is today?

A Yes. I know that he is deceased.

Q On that day that he came to pick up the file, did you have occasion to interview him at all?

A No, I did not.

Q On February 20th, 1970, did you have occasion to interview Mr. Vispi?

A Yes, I did.

Q Where did that take place?

A At the office of the Intelligence Division, Internal Revenue Service.

Q In what city?

A In Buffalo, New York.

Q Who else was present?

A Revenue Agent Dominick Pardi.

Q On that occasion, did you discuss with Mr. Vispi anything at all concerning his '67 and '68 returns?

MR. MOOT: If Your Honor please, before this conversation is explored, Your Honor has ruled that at the time of his initial inquiry by the Special Agents the defendant was not given the proper Constitutional warning. Until it is established that a proper warning with respect to his Constitutional rights is given --

THE COURT: It may appear different by his testimony.

MR. MOOT: Yes, but I am objecting to any discussion as to the '67 and '68 returns until it is so established.

THE COURT: Objection is overruled. They had to know what they were talking about.

MR. WELCH: Excuse me, Your Honor, but I didn't hear Your Honor's ruling.

THE COURT: The objection is overruled. They had to know what they were talking about. They might have been talking about the Finger Lakes races, for all I know.

Q What, in effect, did Mr. Vispi say with respect to filing of income tax returns --

THE COURT: What was the subject matter you were talking about?

A I asked Mr. Vispi to explain his reasons for not timely filing his '67 and '68 returns.

MR. MOOT: I'm going to object to any conversation of the defendant until it is established that the proper Constitutional warning was given.

THE COURT: I will sustain the objection.

MR. WELCH: If Your Honor please, the Government established earlier today that the proper Constitutional warning was given. Agent Pardi established that the warning required by the regulations of the Internal Revenue Service was provided to this defendant. Your Honor ruled a docu-

ment inadmissible, but Your Honor did not suppress the testimony concerning the admissions made by this defendant.

THE COURT: I consider the subject open now. This witness can change his testimony if he wants to or change the testimony of any other witness.

Q To your knowledge, Mr. Pasquarella, was Mr. Vispi advised of his Constitutional rights?

MR. MOOT: At what time?

THE COURT: That, in itself, means nothing. A great many agents don't know the Constitutional rights, and that is not criticism -- a great many lawyers don't, either.

MR. WELCH: If Your Honor please, full Miranda warnings are not required in a criminal investigation by the Internal Revenue Service.

THE COURT: I sustain the objection.

MR. WELCH: Would Your Honor consider allowing us to submit a brief on the question, because --

THE COURT: I haven't got time for briefs.

MR. WELCH: -- because the law is clear that he was given --

THE COURT: Lots of times the lawyers say, "It is clear," and it isn't clear to me. If you want to submit a brief overnight and take up some other subject now, that is all right with me.

Q To your knowledge, Mr. Pasquarella, was Mr. Vispi at any time advised by any agent of any rights?

A Yes.

THE COURT: It doesn't make any difference whether he told him he couldn't ride a bicycle on the sidewalk. That has got nothing to do with it, and that is not the kind of rights we are talking about.

MR. WELCH: We have established what he was told already, Your Honor, the rights required by the cases in the Internal Revenue Service regulations. This was not a custodial interrogation.

THE COURT: I haven't read all the

cases in the Internal Revenue regulations, and I don't pretend to have. And I know very few judges that have, either.

MR. WELCH: May we adjourn for the evening, Your Honor?

THE COURT: Not for the evening -- we've got a whole hour. I would like to occupy it. I have already carved out an hour and a half. I don't want to take any more out.

MR. WELCH: Since this is not a jury trial, would Your Honor consider proceeding, subject to our briefing this question as to the validity of advice of rights?

THE COURT: You mean decide it now, and if I am wrong, back up on it?

MR. WELCH: Yes, Your Honor.

THE COURT: Is this the end of your case?

MR. WELCH: With the exception of a stipulation, yes, Your Honor.

THE COURT: Show me one of the cases that you rely on, and not a lot of

them -- one of them. And 2 Cert. 2nd, preferably.

(Pause in the proceedings.)

THE COURT: This goes to the very gist of the offense.

MR. WELCH: That's correct, Your Honor.

THE COURT: In fact, an affirmative answer would establish it conclusively.

MR. WELCH: I agree with Your Honor. I'm not arguing that. I'm arguing that we have established that he was given whatever was required.

THE COURT: You are going to show me a case?

MR. WELCH: Yes, Your Honor. I am attempting to locate it for you.

The first case I have been able to find is United States v. Squeri, 398 F2d. 875 (1968).

THE COURT: That is readily available. The attendant can bring it to me.

MR. WELCH: United States v. Marcus,

401 F2d. 563 (1968).

(Pause in the proceedings.)

MR. WELCH: At the moment, Your Honor, I am just looking for the Second Circuit cases. If Your Honor wishes to consider other Circuits, I have those.

United States v. White, et al, 417 F2d 89 (1969.

THE COURT: What is the Circuit?

MR. WELCH: Second Circuit, Your Honor.

THE COURT: If that is on the nose, and it is the Second Circuit, I haven't got anything to say about it. I am bound by it.

MR. WELCH: United States v. Caiello is a Second Circuit case, Your Honor.

THE COURT: Write it down and bring it to me.

(Pause in the proceedings.)

(Citations handed to the Court.)

THE COURT: What is the date of the citation?

MR. WELCH: 1969, Your Honor.

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Discussion.

THE COURT: Did anything happen to it in the way of reversal, modification?

MR. WELCH: Certiorari was denied. That is the only information that I have on it, Your Honor.

THE COURT: All right.

MR. MOOT: Have you got the date that certiorari was denied?

MR. WELCH: I have the citation, 397 U.S. 1039.

THE COURT: Give him the name of it so he knows he has got the right case.

(Pause in the proceedings.)

THE COURT: I read the syllabus, and the syllabus doesn't ask what the question was at all. In your case it asks specifically if he had committed a criminal act. But since the Circuits aren't in agreement upon this, I will take this case overnight. If these are all the cases you have, I will take these, and if you have any more, you can give them to me.

MR. WELCH: Those are all the Second

Circuit cases, Your Honor.

THE COURT: Those are the cases that I prefer.

MR. WELCH: There are innumerable other cases ruling in the Government's favor on this question.

MR. MOOT: Can I be heard briefly on this?

THE COURT: Yes.

MR. MOOT: I believe the matter has to be approached with some care, because it depends upon the status of the law at a given point in time, and I don't know from memory whether the law changed since 1969 and 1975, in the past six years or not, but I believe how these cases shepardize out will make a considerable difference.

One of the early objections to requiring a Miranda warning in a non-custodial case was just that, that it was a non-custodial case, so it wasn't required. The law then changed and required a Miranda warning in a non-custodial case, because

the practice of the Internal Revenue Service, the rules and regulations of the Internal Revenue Service, required it to be given, and they held that agents who were not following the regulations of the Internal Revenue Service which required the warning to be given that the testimony was inadmissible. I'm doing this by memory, Your Honor, without a chance to research it.

So we have got a dual question here; not just whether a Miranda warning is required in a non-custodial tax case, but also we have the question as to what was the practice of the Internal Revenue Service at the time with respect to requiring a warning. Now if they required a warning, it must have been a proper warning. To require an improper warning or something less than a full Miranda warning would be meaningless. And it is hard to argue the matter without the benefit of reading the cases and just from my general know ige in the area. I would say that if at the

time of this investigation in 1970 the Internal Revenue Service required a Miranda warning to be given before the prospective defendant was interviewed with respect to, as Your Honor points out, specific admission of the crime, if it required such a warning to be given, then the warning had to be a full Miranda warning, not what would happen to be on their card.

THE COURT: Let me ask the Reporter what was the question on which this discussion was raised. In other words, what did the Internal Revenue Agent ask this defendant.

(Record read.)

MR. MOOT: This makes it very clear, Your Honor, and I am reading from, without prejudice, to its exclusion from evidence, Your Honor, but for the purpose of the question of law before Your Honor only. I want to read just the first sentence of the memorandum of this meeting which Mr. Pasquarella has been asked about and

Mr. Pasquarella's summary of this meeting. The first sentence says, "I asked Mr. Vispi to elaborate on his reasons he had given to Special Agent Francis for not filing his 1967 and '68 returns."

So the specific question and the subject of conversation was, as Your Honor said, the very gist of the offense here, he was being asked to confess or give facts directly related to the wilfull element of the crime, and that is why I think it is very important to have a correct ruling on this.

"I asked Mr. Vispi to elaborate on his reasons for not filing --" That was the beginning of the conversation. That is why I am objecting to giving the defendant's answer until it is fully established that he received a proper warning.

THE COURT: He was definitely a suspect at that time. They were asking him about his guilt.

MR. WELCH: That's correct, Your

Honor.

THE COURT: There is no question about that. If you want to file anything tonight or around nine in the morning, I will be glad to read it before I come on the bench.

MR. MOOT: Thank you, Your Honor.

Your Honor, it may be important to my view of these cases. May I have from the Government a copy of the regulation dealing with the matter of warnings to the taxpayers which applied in 1970?

THE COURT: The what?

MR. MOOT: The regulation issued to the Special Agents which applied in 1970 on this point. I believe that may be germane. The Special Agents have a handbook which instructs them with respect to what type of warning should be given and when it should be given.

THE COURT: Is there such a book?

MR. WELCH: I believe there is. The only question I have is whether or not

we can get our hands on the regulation as it was written during the period that this interview took place. I would be happy to provide one to Mr. Moot if we can get one. I agree to that, if we can get one. That is the only question I have. I don't know if we have one as it was in effect at that date. There are current ones as effective 1975, but the ones applicable in 1970, I don't know if we have here.

THE COURT: There are certainly gentlemen in that office who were there in both years and can tell you that.

MR. WELCH: We have a man on the witness stand who can tell us that, Your Honor.

THE COURT: Maybe we can dispose of it right now.

MR. WELCH: He was not there when Agent Francis, who is deceased, advised this man of rights, which we went through with Agent Pardi this morning.

THE COURT: You know there is a

manual, though, issued?

THE WITNESS: Yes, Your Honor.

THE COURT: And you know that manual had something to do with warning defendants of their Constitutional rights, Miranda rights?

THE WITNESS: Yes.

THE COURT: Are you familiar with the time when any amendments to that were made?

THE WITNESS: The warnings that were given to Mr. Vispi by Special Agent Francis were the type warnings that were in effect --

THE COURT: That begs the whole question. That is what I have to decide. What I am trying to find out is that if there were changes I want to know when they were made.

MR. MOOT: Your Honor, this witness is also under subpoena, like Mr. Pardi, and one of the elements on the subpoena for Mr. Pasquarella was the handbook that we are

now talking about, and he should have brought it here with him today, so it should be available.

THE COURT: Is it available?

THE WITNESS: It is, yes.

MR. WELCH: The witness says it is, yes. I understood it was in the building here. I thought he brought it to court.

THE COURT: He didn't say in the building.

MR. WELCH: I do not have it here in court.

THE COURT: That isn't the question. It was covered by the subpoena. He admits that it was.

MR. WELCH: Yes, Your Honor.

THE COURT: Where is it?

THE WITNESS: It is in your office, Mr. Welch.

MR. WELCH: It is in our office, Your Honor.

THE COURT: Then you've got it, but you haven't produced it?

MR. WELCH: Well, he is my witness at the moment. It was his subpoena. We can give it to him when he wants it. He just hasn't asked for it yet, that's all.

MR. MOOT: I'm asking for it right now, and so is the Court.

MR. WELCH: We will be happy to give it to him. It is just physically not here.

THE COURT: Whether you are happy or not, just give it to him.

MR. WELCH: All right, Your Honor.

(At 4:00 P.M., an adjournment was taken to Friday, October 24, 1975, at 10:00 A.M.)

- - -

Rochester, New York

Friday, October 24, 1975

10:00 A.M.

- - -

(Trial resumed.)

THE COURT: I deny the defendant's motion to suppress admissions made by the defendant. I do so expressly on the authority of U.S. v. Caiello, 420 F2d 471. Certiorari was denied, 397 U. S. 1039. Exhibit G-7 is admitted entirely into evidence.

MR. MOOT: Objection, Your Honor.

(Government's Exhibit 7 marked in evidence.)

M I C H A E L A. P A S Q U A R E L L A,

called as a witness by the Government, being previously duly sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. WELCH:

Q Mr. Pasquarella, you are a Special Agent with the Internal Revenue Service, Intelligence Division, is that correct?

A Yes, sir.

Q And you testified yesterday that you were an Internal Revenue Service Intelligence Agent in January, 1970, is that correct?

A Yes, sir.

Q And have been since then?

A Yes, sir.

Q We had left off yesterday with your testimony concerning a meeting of February 20th, 1970. On that date, did you have occasion to meet with Mr. Joseph Vispi?

A Yes, I did.

Q Where did that meeting take place?

A At the office of Internal Revenue Service, Intelligence Division, in Buffalo, New York.

Q Who else was present?

A Revenue Agent Dominick Pardi.

Q And was Mr. Vispi in custody on that day?

A No, he was not.

MR. MOOT: Your Honor, I'm going to object to conclusory words of that nature and ask, if I may, preliminary questions as to how and why Mr. Vispi appeared at this time, and as I have argued to the Court before, that I believe on the

inherently compulsive tests set forth in the authority which we cited to the Court, Judge Lombard's decision.

THE COURT: As I understand, the man is in custody when he is arrested, when he can't go any place.

MR. MOOT: I can't object to that, but it is my understanding that in this case the defendant was requested to appear, did appear, and was examined in the Revenue Agent's office, or the office of the criminal agent, which is a very different factual situation than Caiello, where the interrogation, which was complained of, was in the defendant's grocery store. I think that there were conditions of an inherently compulsive nature, and I want an opportunity to show it at this time.

MR. WELCH: May I be heard?

THE COURT: I will let him have the preliminary examination. Give him the benefit of the doubt.

VOIR DIRE EXAMINATION

BY MR. MOOT:

Q We are referring, Mr. Pasquarella, to a meeting of February 20th, 1970, are we?

A Yes, sir.

Q And we read from the first part of the memorandum of that meeting yesterday, which reads, "I asked Mr. Vispi to elaborate on his reasons he had given to Special Agent Francis for not filing his 1967 and '68 returns."

Do you recall that portion of the memorandum?

A Yes, I do.

Q And this meeting was in the Intelligence Division Office in Buffalo, New York?

A Yes, sir.

Q And that is the office of the criminal investigative branch of the Internal Revenue Service, is it not?

A Yes, sir.

Q And this meeting was called at your request, was it not?

A Yes, sir.

Q So you directed Mr. Vispi, the taxpayer, to appear at that time, did you not?

A When I first met Mr. Vispi, it was on February 13th of 1970. He appeared at my office to secure a file that he

had previously given to Special Agent Francis. At that time we had scheduled an appointment for February 20th of 1970.

Q You scheduled it, didn't you?

A Yes, sir.

Q In fact, that meeting ran all day long, according to the memorandum, from 9:45 to 11:30 and then again from 1:30 to 3:40, am I right?

A On February 20th?

MR. MOOT: Yes, and let me have this marked for identification, please.

(Defendant's Exhibit 11 marked for identification.)

Q Do you recognize D-11 as the memorandum dealing with the meeting we are talking about?

A Yes, sir.

Q And are the times given there correctly? It's an all-day conference, several hours in the morning and then again in the afternoon, right?

A It started at 9:45, went to 11:30, and then we adjourned and started at 1:30 and continued until 3:40.

Q And everything that takes place from there, the only thing that is left is the page and a half of typewritten memorandum, is that correct, signed by you and Mr. Pardi?

A That is my memorandum, yes, sir.

Q That is all that is left? Everything else has been destroyed, any other notes in connection with that meeting has been destroyed?

A Yes, sir.

Q At the time that you scheduled this meeting and asked the taxpayer, Mr. Vispi, to appear, there is no question he was the target of a criminal investigation for wilfull failure to file the return, is there?

A No.

Q You knew that to be so, that he was a target for such criminal charges at the time, did you not?

A You say "target." He was the subject of the investigation, yes, sir.

Q And the very purpose of the meeting, I have read, was to inquire into the reasons for not filing, and that is the very gist of the offense, wilfullness, isn't it? And that is what you wanted him in there for, to explore the question of wilfullness, is that not so?

A Yes, sir.

Q So, in substance, what you were asking the target of the investigation to do was to come into the office of the criminal investigator and answer questions with re-

spect to the very gist of the offense, whether it was wilfull or not, is that not so?

A Yes, sir.

Q And at that time you gave no warning whatsoever. You simply relied on the memorandum, G-7, and what was given earlier, is that correct?

A Yes, sir.

Q At the time when Mr. Vispi came, in addition to the matter of having filed his 1967 and '68 returns late, and I think they were filed, the records show, on January 21, 1970, and that you had them in your possession, and in addition to that matter, you had the matter that he was delinquent in the payment of those returns at the time you requested him to come, was he not?

A Yes, sir.

Q And he also had had an exhaustive investigation of his '65 and '66 returns with respect to the amount of tax due on that, is that not right?

A Yes, sir.

Q Tell me, Mr. Pasquarella, was the office of the criminal branch of the Internal Revenue Service in Buffalo on the second floor of the building, was it not?

A At that time, yes.

Q And did you have to be passed through for security to get up there?

A No, sir.

Q You couldn't just walk in on your own as a taxpayer or citizen, could you?

A Yes, you could.

Q You could just walk in any part of the criminal investigative branch of the Internal Revenue Service on your own, anybody off the street?

A There were no guards there, or there wasn't any special doors. We were on the second floor with a sign marked "Intelligence Division."

Q But you had to identify yourself and get permission to enter, didn't you?

A No, you didn't.

Q You mean to say a citizen could walk off the street and walk into the criminal investigative office of the Internal Revenue Service, and nobody would say, "Who are you?" Or, "What are you doing here?" Is that your testimony?

A The first person you would see when you walked in the door is one of the secretaries.

Q And you would have to say who you were or why you were there, or you wouldn't get past her, would you?

A At the time, yes, you would.

Q That's right, and when you came into the office, this meeting shows that Mr. Vispi was alone. He didn't come in with an accountant or a lawyer, did he?

A No, he did not.

Q Mr. Pardi was there, and Mr. Pardi was the man who had been over his records with a fine-tooth comb as to how much more tax he owed for '65 and '66, am I correct?

A Yes, sir.

Q That matter was open at the time, was it not? It had not been paid, had it?

A I don't know if the tax for '65 and '66 had been paid at that time.

Q And the entire matter of '67 and '68, he was a target of a criminal investigation with respect to that at that time, was he not?

A Yes, sir, he was.

Q And none of that tax had been paid, had it?

A No, it had not.

Q Isn't it fair to say under these circumstances that a taxpayer who is advised to attend such a meeting is under some compulsion to attend?

A No.

Q And having attended, don't you think he is under some compulsion to stay through the meeting?

MR. WELCH: Objection, Your Honor. These are conclusions --

THE COURT: I will sustain the objection. No matter what he would answer about it, that wouldn't have any effect upon me, because that would be a conclusion. That would be his interpretation.

MR. WELCH: Thank you, Your Honor.

MR. MOOT: Your Honor, I will approach it in a different manner.

VOIR DIRE EXAMINATION CONTINUED

BY MR. MOOT:

Q At any time on February 20th, did you advise Mr. Vispi that he was free to get up and leave? Did you tell him that?

A Mr. Vispi told me that --

Q I'm not asking you what he said. That is what I'm objecting to. I'm asking you what you told him. Did you at any time tell him he was free to get up and go?

A No, I did not say that.

THE COURT: Did he ask you?

A Mr. Vispi told me that he might have to leave without giving me any notice, because he had a problem, and in fact, he asked me where the men's room was, and I pointed it out to him. He said that he might have to leave without asking, to just get up and leave. I said, "If you have to do that, just get up and leave."

Q Well, not to leave the meeting, but this is because the poor man was suffering from an acute prostrate problem, and he might have to get up in the middle of the meeting to go to the men's room, is that so?

A Yes, sir, that is exactly what he told me.

Q So in addition to the other matters that I mentioned, you were aware that he had this problem at the time?

A Yes, I was.

MR. MOOT: Your Honor, based upon these preliminary questions, I believe that this fairly meets the case-by-case test of United States against Fox set forth by Judge Lombard.

THE COURT: I have already ruled on this question.

MR. MOOT: And I am renewing my motion as before, Your Honor. I think

there is no question in this case when you consider the man's health, the chaos of his financial affairs, and his delinquency with respect to four tax years as to payment, that he didn't really have a free choice whether he was going to appear or not.

THE COURT: I have already ruled on the question, and I'm not going to reopen it.

MR. MOOT: I understand, but the record before was without --

THE COURT: I deny the motion. I can't make that any more clear.

MR. MOOT: Exception, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. WELCH:

Q Now if you turn your attention to that meeting of February 20th, 1970, at the Internal Revenue Service, Intelligence Division Office, did you have occasion to ask Mr. Vispi as to his reasons for not filing his 1967 and '68 income tax returns?

A Yes, I did.

Q What did he say?

A Mr. Vispi told me that he had no valid reason for not filing his 1967 and 1968 returns. He also told me that he was aware that he was required to file a return. He further told me that his accountant, Mr. Joseph Capollo, told him to file his returns, even if he didn't have the money to pay the tax that was due and owing, and he also said that as an attorney he was cognizant of the requirement to file the return.

THE COURT: He said what?

A He said as an attorney he was cognizant of the requirement to file a tax return.

THE COURT: I'm talking about the advice of his accountant. You say his accountant told him he had a right to file without the payment of the tax?

A No. He told me that his accountant told him that even if he did not have the money to pay the tax due and owing, to file the return anyway.

THE COURT: The law requires that you file the return and pay the tax, too, doesn't it?

A The law requires you to pay the tax, but you can file

the return without remittance and you would subsequently be billed.

THE COURT: You mean you have a right under the law to file the return without payment of the tax?

A I don't know if there is a specific statute saying you can do that, but I know you can file the return without making payment. Of course, you would be subsequently billed.

THE COURT: Of course, and I understand that you don't get out of the payment of the tax by merely filing the return.

A No.

THE COURT: But would you say as an agent that a taxpayer has a right to file a return without the payment of the tax?

A What I am saying is an individual can file a tax return without --

THE COURT: Of course, he can file it. He can stick it under the door, can't he?

A Yes, he can.

THE COURT: Nobody knows that the tax was included or not?

A In that sense, he could file the tax. What I'm saying, an individual could come in with the tax returns to the Internal Revenue Service and file that tax return. In other words, it would be accepted by the Internal Revenue Service, even if he doesn't pay the tax that is due and owing at the time he is filing the return. The Internal Revenue Service will accept the tax return.

THE COURT: All right.

Q In this discussion that you had, he had no valid reason for failing to file the returns? Did he suggest any mitigating factors as to why he didn't file the returns?

A Yes, he did. He told me he had physical problems, which included a prostrate problem and an ulcer problem, and he also said he had some financial problems.

THE COURT: What do you mean "financial problems"? You mean he didn't have money to pay the tax?

A Yes. That is what he said, that he had financial problems, that he had borrowed money during the years.

THE COURT: He might have had a lot of financial problems that had nothing

to do with payment of the tax. Did he tell you he didn't have money to pay the tax?

A No. He did not specifically say he did not have money. He just made the general term that he had financial problems, Your Honor.

Q To your knowledge did he have the funds in which to pay the taxes?

A Yes, he did.

Q How do you know?

A During the investigation we had secured copies of Vispi's savings account at the Buffalo Savings Bank and Erie County Savings Bank.

Q Without testifying as to what was in those, did you discuss them with Mr. Vispi?

A Yes, I did.

Q What did he tell you?

A I asked Mr. Vispi the purpose of two large withdrawals from his savings account. There was one withdrawal for approximately $4,500 February, 1969, and another withdrawal for approximately $3,700 in April of 1970. Mr. Vispi said that the withdrawal for $4,500 was used to make a $5,000 donation to the Republican Party, because he was ordered to do so by Alphonso Bellanca , Erie County

Republican Chairman.

MR. MOOT: Your Honor, I'm objecting to this. First of all, I think it is prejudicial, and secondly, I don't think it is relevant, and I don't see how this agent can possibly, based on what he said, say whether the man had money or not. Apparently, his testimony indicated that he had other obligations that he was compelled to make, and he didn't have the money.

THE COURT: This isn't as to the truth of the allegation. It relates to the reason that he gave him for not paying the tax.

MR. MOOT: I understood the inquiry was in support of the Agent's conclusion that he knew that he had financial ability to pay.

THE COURT: The objection is overruled. He would have financial ability, if he didn't draw the money out of the bank for some other reason.

MR. MOOT: Unless we are going to

examine the entire financial picture of the Vispi family at this time, how can we resolve this question without going into all the obligations, overdue accounts, and unpaid bills, of the entire family?

THE COURT: We can do that if we want to.

MR. MOOT: I object, Your Honor.

THE COURT: The objection is overruled.

Q Had you finished explaining that $5,000 transaction? I'm sorry, but I got distracted.

A He told me that --

THE COURT: He said he paid a political contribution on the part of the Republican Chairman.

A Yes. Mr. Vispi told me he was ordered by Mr. Bellanca to make this $5,000 contribution to the Republican Party.

Q You discussed with him a $3,000 transaction also?

A Yes.

Q Do you recall what he told you?

A Yes. He told me the purpose of that withdrawal was to pay off an outstanding loan that he had. He did not tell

me what the loan was for, just that he had paid off an outstanding loan.

Q What was the date of that transaction?

A April, 1970.

Q 1970 or 1969?

A The first one was in February, '69, and the second one was in April of '69.

Q If I might direct your attention to June 25th, 1970, on that date did you have occasion to meet with Mr. Vispi?

A Yes, I did.

Q And where did that take place?

A At the office of the Intelligence Division, Internal Revenue Service, in Buffalo, New York.

Q At any time during the conduct of your investigation, did you or any agents of the Internal Revenue Service arrest Mr. Vispi or place him in custody?

A No, I did not.

Q So that on June 25th, '70, he was not in custody?

A No, he was not.

MR. MOOT: Same objection, Your Honor. I won't repeat my objections with respect to the matter of conditions which are inherently compulsive. I think we

covered that.

THE COURT: I say again that to me "in custody" means you are under arrest if you can't go any place. You are restricted as to your whereabouts.

MR. MOOT: Yes, I think Your Honor, without further argument, Your Honor understands the position of the defendant is that the test is not whether they are under arrest but whether the inquiry is being made under conditions which are inherently compulsive, which is the language of the Miranda decision. I don't want to keep making the objection and slowing the trial, but --

MR. WELCH: For purposes of this, Your Honor, is it stipulated at no time was Mr. Vispi in custody?

THE COURT: Don't ask him to stipulate it.

MR. WELCH: I don't ask him to stipulate it.

THE COURT: He is arguing, in ef-

fect, he was in custody. That is exactly what he is arguing.

Q At any time during the course of the investigation, was Mr. Vispi in custody?

A No, he was not.

Q Directing your attention to June 25th, 1970 --

MR. MOOT: Your Honor, I just want to understand, because I don't want to keep interrupting every time that question is asked. I have made my position clear. I have made it once, and I want to have an objection on this matter without interrupting each time.

THE COURT: I understand your position perfectly, and I think counsel for the Government understands it, too.

MR. WELCH: I understand, Your Honor. He is reserving his objection for all of these interrogations or interviews.

Q June 25th, 1970, you had occasion to be with Mr. Vispi, is that correct?

A Yes, I did.

Q Where was that?

A At the office of the Internal Revenue Service, Intelli-

gence Division, in Buffalo, New York.

Q Who was there?

A Mr. Vispi, myself and Mr. Pardi.

THE COURT: This is the same meeting we have been talking about all along here?

A No, Your Honor. This is another meeting.

Q The first meeting was in February, '70, and this meeting is in June of 1970?

A Yes.

THE COURT: The same personnel were there?

A Yes, Your Honor.

Q On this occasion, June 25th, 1970, what, if anything, was said by Mr. Vispi in regard to his own private personal law practice as to what he did in that practice?

THE COURT: First, what questions were asked of him.

Q Would you answer that question?

A I asked Mr. Vispi if he prepared any tax returns for any of his clients. Mr. Vispi said that he prepared about six or eight tax returns each year, and he told me he prepared the returns, the '67 and '68 returns, of a Mr.

and Mrs. Joseph Enzina and a Mr. and Mrs. William Kinsella, and he also told me he charged a fee of ten to fifteen dollars for the preparation of those tax returns.

Q What, if any, questions were put to Mr. Vispi and what, if any, answers did he give you concerning specific items of income for the years '67 and '68?

A I asked Mr. Vispi if he received a $3,500 fee from a Mr. Robert Kisner, who is the executor for the Mallue Estate. Mr. Vispi said he did receive the fee in 1968 and he realized it was income to him then. I told Mr. Vispi that I could not find this fee recorded in the gross receipts record that he had given me. Mr. Vispi then said it might have been an oversight on his part, because he did not report the fee on his 1968 return.

Q Did you have any discussion with him concerning his New York State returns?

A Yes, I did. I asked Mr. Vispi if he, in fact, did file his 1967 and 1968 New York State income tax returns, and he said he did not.

Q Did you ask Mr. Vispi anything concerning the payment of the taxes for '67 and '68, or did he tell you anything in that regard?

A Mr. Vispi asked me whether he should file his 1967 and

1968 New York State returns now, or wait until I completed the investigation of his '67 and '68 Federal income tax returns. I advised Mr. Vispi that he should do whatever he thought was best.

Q Perhaps you didn't understand my question. My question was directed to the payment of the taxes due on his '67 and '68 Federal returns?

A Again, I told Mr. Vispi that I was not advising him one way or another. Again, I told him if he wanted to pay the taxes, it was strictly up to him.

THE COURT: Didn't you tell him that the Government wouldn't accept his return when there was a criminal investigation pending?

A That I would not accept them, Your Honor?

THE COURT: Yes.

A No, I never said that.

THE COURT: That is a fact, though, isn't it?

A No, it is not.

THE COURT: You mean to say while a man is under investigation for criminal investigation of his evasion of his tax

that the Government will accept his money in payment of the tax?

A Yes.

THE COURT: They will?

A They will.

THE COURT: I have been informed by them many, many times that they don't.

Q Mr. Pasquarella, you say they will accept the payment of the tax. Does that give credit to the man's account, or does his tax liability get finally settled pending the disposition of the charges?

A No, it does not. The Internal Revenue Service will accept a payment, but that payment remains in a separate file, pending the outcome of the criminal proceedings.

THE COURT: You mean they take his money and keep it?

A Yes, Your Honor.

THE COURT: They won't credit him on the tax with it?

A Exactly right, Your Honor.

THE COURT: Because very often I like to know before a criminal case is decided whether he has paid the civil tax,

and I ask the Internal Revenue Service if he has paid his tax, and they tell me flatly they won't accept the payment of the tax until the criminal liability is determined. If I'm wrong about that, I certainly would like to find out.

Q Is it a question they will accept the funds but won't settle the account as to exact dollar amount that he is liable to?

A That is correct. They will accept the funds.

Q But, in effect, it is not credited as a payment to his account while the criminal question is still outstanding?

A No, it is not.

MR. WELCH: Does that answer Your Honor's question?

THE COURT: No, it doesn't.

Q To your knowledge, is there any requirement or regulation that indicates that an employee of the Internal Revenue Service may not accept a payment while criminal charges are pending?

A There is no regulation, to my knowledge.

THE COURT: Is there a polic/ or maybe a regulation written out, or a policy

without being written out?

As far as you know, there is no policy that the Internal Revenue Service will not accept payment of monies on a tax account when the taxpayer is under investigation for criminal liability?

A Yes, Your Honor, there is no such policy.

Q Mr. Pasquarella, directing your attention to July 21st, 1970, did you have occasion to meet with Mr. Vispi on that day?

A Yes, I did.

Q Where did that meeting take place?

A The office of the Internal Revenue Service, Intelligence Division, in Buffalo, New York.

Q Who else was there, if anyone?

A Mr. Pardi.

Q On that occasion what, if anything, was said by Mr. Vispi concerning his personal history or his personal background?

A Mr. Vispi told me his date of birth was September 13, 1920. He told me he married the former Theresa Grillo in 1946 and that he had attended the University of Buffalo and he received his LL.B degree in 1949.

Q What, if anything, was said about any further items of

income on the 1967 or '68 returns?

A This time I asked Mr. Vispi if he received a $7,000 fee from Anthony LaMastra, Executor for the O'Connor Estate. Mr. Vispi told me he did receive the fee in January of 1968 and realized it was income to him then, but that he did not report it on his 1968 income tax return because the estate had not been closed. He said the estate would be closed sometime in 1970 and that he was going to report it on his 1970 income tax return.

Q Had you had occasion to examine his 1968 return that had been filed at that time?

A Yes, I did.

Q And was that item of income reflected in the figures of that return?

A It was not included on that return.

Q Directing your attention to August 28, 1970, did you have occasion to meet with Mr. Vispi on that day?

A Yes, I did.

Q Where did that meeting take place?

A The office of the Internal Revenue Service, Intelligence Division, in Buffalo, New York.

Q Who else was present that day?

A Mr. Pardi.

Q On that day what, if anything, further was said as to the $7,000 item of income that had been discussed in the previous interview?

THE COURT: What item? Name it by amount.

Q Mr. Pasquarella, you just testified --

THE COURT: I know what he testified to. I want you to point it out by name.

Q What, if anything, further was said concerning the legal fee paid for the O'Connor estate?

A Mr. Vispi at the time showed me the check that he had received from Mr. LaMastra and the check was for $7,000.

Q Was there any other discussion concerning any other items that had not been reported on the filed return?

THE COURT: I understood that the check was not paid.

A Yes, Your Honor, it was paid. The check was dated January 31st of 1968.

THE COURT: So the check was paid?

A The check was paid to Mr. Vispi.

THE COURT: How did he happen to have the check, then, if it was paid?

A He was handling the estate, the O'Connor estate.

THE COURT: He was the executor?

A No. The executor was Mr. LaMastra. Mr. Vispi was handling the estate, the legal work regarding the estate, so he had the records of the estate.

THE COURT: You said he had the check?

A Yes, Your Honor, I did say that.

Q He had possession of the estate file, is that correct?

A Yes, he did.

Q And he was bringing the check in to corroborate what he had told you the interview before?

A Yes.

Q That he had, in fact, received the $7,000?

A Yes.

THE COURT: You mean the check had just been issued a couple of days before that?

A No, Your Honor. The check was issued in January, 1968.

THE COURT: To Vispi?

A Yes, Your Honor.

THE COURT: And he still has the check a couple of months later?

A This would be a couple of years later. We spoke about this receipt of $7,000 in our interview of July of 1970.

THE COURT: All right.

Q Was there any further discussion concerning any other items --

THE COURT: He happened to have the check, then, because he had charge of the file?

A Yes, Your Honor.

Q Was there any further discussion concerning any other items of income --

THE COURT: Did you say he was the executor?

A No. He was not the executor.

THE COURT: What was he?

A He was the attorney who was handling the estate.

THE COURT: He was the attorney for the executor?

A Yes, Your Honor.

Q Mr. Pasquarella, was there any further discussion concerning any other items of income for either his '67 or '68 returns?

A Yes. Mr. Vispi told me he had realized that he forgot

to report another fee on his 1967 return. He told me that in November of 1967, that he and another attorney by the name of William Brennan were co-counsel in a condemnation proceeding and that they received a $3,000 fee and split it $1,500 each.

Q Is this something that he told you in response to a question, or something he volunteered?

A Something he volunteered to me.

Q What, if anything, was said concerning filing amended returns for the years '67 and '68?

A Mr. Vispi told me at that time that he was thinking about filing amended returns to report the fees that he had not reported on his original 1967 and 1968 returns.

Q To your knowledge, did Mr. Vispi file amended returns for the years 1967 and 1968?

A Yes, he did.

Q How do you know?

A He filed them with me. He hand-delivered the amended returns to me on November 4th of 1970.

Q Have you had an opportunity to examine those returns?

A Yes, I have.

Q Did Mr. Vispi credit those fees that were discovered during the course of the investigation to the correct

tax years?

A No, he did not.

Q But the fees are, in fact, reported or taken into consideration on the tax returns but for the wrong years, is that correct?

A Yes. He reported the $7,000 fee that he received in 1968 on his amended 1967 return, and the $5,000 in fees he received in 1967 he reported in his '68 amended return.

Q I would like to direct your attention to November 17, 1970. Did you have occasion to meet with Mr. Vispi on that day?

A Yes, I did.

Q And where did that meeting take place?

A It was also at the office of the Internal Revenue Service in the Intelligence Division in Buffalo, New York.

Q Who else was present?

A At that time Mr. Vispi was present, and Mr. Fine was present.

Q Who is Mr. Fine?

A Mr. Fine was Mr. Vispi's attorney at that time.

Q Was anyone else present?

A Mr. Pardi and Mr. Robert Ludwig.

Q And who is Mr. Robert Ludwig?

A He is my Group Manager.

Q He is an Internal Revenue Service employee, is that correct?

A Yes, he is.

Q Now on that occasion what, if anything, was said concerning Mr. Vispi's applications for extensions of time to file the 1967 and 1968 returns?

A Mr. Vispi said that he believed he had requested extensions to file both his '67 and '68 returns; however, he said that he had searched through his records, but he could not find any proof of these requests for extensions. But he also said that he knew the extensions for requests were not granted.

Q He said he knew they were not granted?

A Yes.

MR. WELCH: Would you mark this for identification?

(Government's Exhibit 9 marked for identification.)

Q Mr. Pasquarella, on November 30th, 1970, did you have occasion to meet with Mr. Vispi on that day?

A Yes, I did.

Q Where did that take place?

A The office of the Internal Revenue Service, Intelligence

Division, in Buffalo, New York.

MR. MOOT: What date?

A November 30th.

Q Would you describe to the Court what took place that day?

MR. MOOT: Objection.

THE COURT: Who was there?

A Just Mr. Vispi.

Q Would you describe to the Court what took place then?

MR. MOOT: Objection, Your Honor. In response to the pretrial motion made shortly after the arraignment, the Government has furnished me with a memorandum of these various meetings, but they have not furnished me, according to my records, any memorandum of the meeting of November 30th, 1970, nor have I had an opportunity to examine such memorandum as I have on the others prior to the trial. I don't think that there has been a compliance with the pretrial discovery order, if they intend to go into a meeting now for the first time.

Q Mr. Pasquarella, was there a memorandum of an interview that day?

A No, there was not.

Q Was there an interview that day?

A No, there was not.

MR. WELCH: May I proceed, Your Honor?

THE COURT: Well, you just asked him if there was an interview, and he said there was.

MR. WELCH: I thought I asked him if he met with Mr. Vispi that day and what took place.

THE COURT: Then to finalize it, there was no interview that day.

Q But you did see Mr. Vispi that day?

A Yes, I did.

Q And there was no memorandum of any interview that day?

A No, there was not.

Q Would you tell the Court what took place that day?

A Mr. Vispi appeared at my office and hand-delivered to me requests for extensions for the 1966 and 1967 tax years. He left these, and I made photocopies of what he had given me, and returned his originals back to him, and he left the office immediately. There was no interview

conducted.

Q I'm handing you what has been marked for identification as G-9. Does that appear to be the material that Mr. Vispi handed to you that day?

A Yes, it is.

Q Or a photocopy of it?

A It is a photocopy of it.

Q Who prepared that photocopy?

A I did.

Q And then what did you do with the original documents?

A I returned them to Mr. Vispi.

MR. WELCH: Your Honor, I offer G-9 into evidence.

MR. MOOT: I would like to have the witness' prior answer read in which he described what it was Mr. Vispi handed to him.

(The following answer read: "Mr. Vispi appeared at my office and hand-delivered to me requests for extensions for the 1966 and 1967 tax years. He left these, and I made photocopies of what he had given me, and returned his originals back to him,

and he left the office immediately. There was no interview conducted.")

MR. MOOT: Clearly, this doesn't refer to those two. It does appear to be in Mr. Vispi's handwriting.

(Pause in the proceedings.)

MR. MOOT: I won't object to the Exhibit, but I will reserve the right to examine on it later.

THE COURT: All right. It is received in evidence.

(Government's Exhibit 9 marked in evidence.)

Q Mr. Pasquarella, the first page --

MR. MOOT: Excuse me, Your Honor, but to save time on my cross examination, could I ask the Court Reporter to mark the prior answer he just read so he could have it again.

(The following answer was marked by the Court Reporter: "Mr. Vispi appeared at my office and hand-delivered to me requests for extensions for the 1966 and 1967

tax years. He left these, and I made photocopies of what he had given me, and returned his originals back to him, and he left the office immediately. There was no interview conducted.")

Q Mr. Pasquarella, G-9 in evidence has on the top of it what appears to be a memo letter, message reply, signed by Joseph Vispi. Where did you first see that memo letter?

A When Mr. Vispi brought it to my office.

Q When he brought the memo letter, or when he brought the applications for extension?

A This was attached to the applications for extension.

Q So that this is his cover letter for what he was giving you?

A Yes.

Q And in the last line of that, he talks about applications for extensions for the years 1967 and 1968, is that correct?

A Yes, it does.

Q But the actual applications that he gave you were for what years?

A For the years 1966 and 1967.

Q And did he give you any other correspondence on that day?

A No, he did not.

Q Well, they are not just limited for applications for extension on this Exhibit, are they?

A No. There are also letters from the Internal Revenue Service to Mr. Joseph Vispi.

MR. WELCH: May I read this to Your Honor, or hand it to the Court?

THE COURT: It is in evidence?

MR. WELCH: Yes. Would you like to consider it later? It just might clarify what it is.

THE COURT: Read it.

MR. WELCH: It is on a form memo letter with the heading of "Joseph C. Vispi, Attorney at Law," with an address and telephone number. It is in handwriting, pen and ink handwriting. It is to Mr. Michael A. Pasquarella, Internal Revenue Service, P. O. Box 268, Niagara Square Station, Buffalo, New York, 14201 and the date 11-30-70, and reads as follows:

"Dear Mr. Pasquarella: I enclose herewith copy of applications for extension

of time to file for years 1967 and 1968 period."

It is signed by Joseph C. Vispi.

The next item is an April 26, 1967, letter, or a copy of that letter, directed to Mr. Joseph and Theresa Vispi, which says: "Your request for an extension of time to file your Federal Income Tax Return cannot be granted without all the information required on the attached forms.

"Please complete all questions on the enclosed forms and return two copies with your original request for consideration.

"Important: Your request will not be considered unless it is received in this office on or before the due date of the return, or within ten days from the date of this letter, if the end of such ten-day period is later than the regular due date."

The next item is an application for extension of time to file signed by Joseph C. Vispi and Theresa M. Vispi with a date next to the signature of April 14th,

1967, concerning the tax year 1966.

The next item is an April 23rd, 1968, letter on Internal Revenue Service District Director letterhead directed to Mr. and Mrs. Vispi, which states:

"Your request for an extension of time to file the Federal Income Tax Return cannot be granted without all the information required on the attached forms."

The rest of the letter is, in substance, the same as the early one, except on the bottom is noted: "Complete Items Nos. 3 and 4."

The attached application thereto is an application for extension of time to file, which is signed by Joseph C. Vispi and Theresa M. Vispi on April 10, 1968, for the tax year 1967.

It says: "State in detail the reason the extension is needed."

And typed in is "Due to the heavy workload, my accountant, Joseph R. Capollo, will be unable to complete my return by

April 15, 1968."

The questions that the letter from the Internal Revenue Service sending it back to Mr. Vispi, the questions that they want him to answer that are left blank are as follows:

"Question No. 3. Did you file an individual income tax return on time (including any authorized extension) for each of the three years immediately preceding the year for which this extension is requested?"

And there is a box for "Yes," and a box for "No," which have no marks therein.

"Question No. 4. "Were you required to file a Declaration of Estimated Tax for the year for which this extension is requested?"

And the blocks "Yes" or "No" are not filled out there, either.

DIRECT EXAMINATION CONTINUED

BY MR. WELCH:

Q Throughout the course of this investigation, Mr. Pasquarella,

you have testified that you have seen various items of records from Mr. Vispi, is that correct?

A Yes.

Q Where did you get those records?

A From Mr. Vispi.

Q And from his own records, were you able to calculate his taxable income for 1967 and 1968?

A Yes, we were.

MR. WELCH: I have no further questions. Thank you, Your Honor.

CROSS EXAMINATION

BY MR. MOOT:

Q Referring now to Government's Exhibit G-9 for identification, I don't believe you were asked, but isn't it a fact that it shows that with respect to the application for an extension of time for the calendar year 1966 that that shows it was signed by Mr. and Mrs. Vispi April 14th, 1967, which would be the day before the required time for filing the return, would it not?

A Yes.

Q Is it not a fact, although you were not asked this on direct examination, that the same application for extension to file for the year 1966 shows that it was, in fact, re-

ceived by the Internal Revenue Service on April 18th, 1967?

A May I see the Exhibit?

MR. MOOT: Certainly.

(Exhibit handed to the witness.)

Q Doesn't that show a receipt stamp?

A Yes, it does.

Q Then insofar as this Exhibit is concerned, although the Government neglected to ask this on your direct examination, it shows, does it not, that prior to the last day to file for 1966, the Government had, in fact, received an application for an extension of time to file for that year?

A That's correct.

Q Then with respect to the application for the other year, 1967, and again, you were not asked this on direct examination, but does not this Exhibit show that this was signed April 10, 1968, five days before the return would be due for the year 1967?

A Yes, sir.

Q And does not this Exhibit, like the other one, show that, in fact, the application for an extension of time was received April 16, 1968? Do you wish to look at it?

A Yes, just to make sure on the date.

(Pause in the proceedings.)

THE WITNESS: April 16th it was received, yes.

Q Then it boils down to this, doesn't it, Mr. Pasquarella, that Mr. Vispi brought you these records which he had found to show that he had, in fact, filed the applications for an extension of time prior to the due date of the returns, is that not so?

A Prior to the due date of the 1966 and 1967 returns, yes.

Q So that is what G-9 really shows, doesn't it?

THE COURT: You spoke of one year due date in 1967, and you spoke of the filing date on April 18th.

MR. MOOT: That is the date it was stamped "Received," Your Honor.

THE COURT: What?

MR. MOOT: That is the date it was stamped "Received" April 18, 1967, for the request for the year 1966.

THE COURT: That wouldn't have been timely for that year?

MR. MOOT: Yes, Your Honor, but the

witness has said that the application carries a date of April 14th. The prior testimony of the Agent Pelland indicates that the requirement is that it must be mailed by the 15th, and a certain amount of time is necessary to open the mail and to stamp it as "Received." So the matter was stamped by the Internal Revenue Service administratively April 18th. It was dated by the taxpayer April 14th. The legal requirement is to have it postmarked on the 15th, and of course, we do not know whether it had that postmark or not. But it is very close to it for the purposes of a criminal case, Your Honor.

THE COURT: very close to it? That is the 14th, and the 18th is on a Saturday, which is several days later.

MR. MOOT: Yes, but the 18th is the day some clerk in the Internal Revenue Service got the mail opened and stamped it. The requirement of the taxpayer is to have it posted the 15th and --

Michael A. Pasquarella for Government, Cross.

THE COURT: There is no evidence of when he had it posted.

MR. MOOT: No. We only have two dates, the date the taxpayer put on it when he signed, and the date the clerk stamped it when the letter was opened. That is all, Your Honor. And the statutory date exists in between the two.

THE COURT: As a matter of fact, it is two days before the stamping on the 18th?

MR. MOOT: Correct.

Now with respect to the year 1967, Your Honor, the Exhibit shows that it was dated by the taxpayer beside his signature April 10, 1968. It shows that it was stamped by the Clerk of the Internal Revenue Service April 16, 1968, which would have been within twenty-four hours of the post-marked date it would have to carry to be within the time required.

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q So much, Mr. Pasquarella, for this Exhibit G-9, except

what did you do with this after he had brought it to you with his handwritten memorandum? Did you refuse to accept it, or did you accept this Exhibit?

A I accepted it. Those are photocopies of what he gave me.

Q Well, did you keep them, or did you return them to him later?

A I returned them to him the same day. I made photocopies of them on the day that he gave them to me.

Q What did you tell him when you returned them to him?

A I didn't tell him anything.

Q So you just made copies and gave them back to him?

A He came to my office to give me these records, and I accepted them from him.

Q But did you tell him they were no good, that they wouldn't do him any good and gave it back to him that day?

A I didn't tell him they were no good.

THE COURT: He proferred that as evidence. You took it as evidence. You made no determination?

A No, I did not.

Q And then you gave them back to him the same day?

A Yes.

THE COURT: You had copies of them?

A Yes. I made copies of what he had given me.

Q As a matter of fact, you did not give them back to him on the same day, did you?

A To my recollection, I gave them back to him on the same day.

Q Let me test that recollection --

THE COURT: The 16th was Saturday.

THE WITNESS: We are not speaking of the 16th, Your Honor.

MR. MOOT: He is speaking, Your Honor, of November 30th, 1970.

THE COURT: Not the date I first spoke of?

MR. MOOT: No.

THE COURT: All right.

Q Are you sure about your recollection in that respect?

A To the best of my recollection, Mr. Vispi delivered those to me, and I made photocopies of what he had given me, and I gave his originals right back to him.

Q As a matter of fact, you didn't do anything of the kind. You mailed them back to him at a later date in December, didn't you?

A I do not recall mailing them back to him.

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 12 marked for identification.)

Q Do you recognize your signature on D-12?

A Yes, I do.

Q This is a carbon copy of the covering letter G-9, is it not?

A Yes, it is.

Q And it shows, does it not, that you mailed these back to him the 3rd day of December, or gave them back on that day?

A I don't remember. It says that on 12-3-70 that I returned these documents to Mr. Vispi.

MR. MOOT: I will offer it in evidence.

MR. WELCH: I have no objection, Your Honor.

THE COURT: It is received.

(Defendant's Exhibit 12 marked in evidence.)

MR. MOOT: To clarify it for the Court, G-12 has been identified as a carbon

copy of G-9 in which Mr. Vispi had written Mr. Pasquarella on the 30th of November, 1970, attaching copies and delivering copies of the requests for an extension of time, which he had been able to find, which we have just referred to. On the right-side side, or the reply part of that letter, is dated December 3, 1970, and is written over the signature of the witness Pasquarella, and reads:

"Dear Mr. Vispi:

"Returned herewith are the documents you submitted."

So that after you had these documents which Mr. Vispi had been able to find by November of 1970, you made copies, examined them, and then decided to return the originalsto him, is that correct?

A Yes, sir.

Q Do you recall reading the investigative report of Mr. Francis that began the inquiry into Mr. Vispi's failure to file the '67 and '68 returns?

A What report are you referring to, sir?

Q The first one, G-7, which is in evidence here.

A You mean a memorandum?

Q Yes.

A Yes, I read it.

Q And in addition to reading Mr. Francis' report, did you talk to Mr. Francis about this case?

A Yes.

THE COURT: You are referring to some Exhibit?

MR. MOOT: Yes, I am. It is G-7, Your Honor. This is the memorandum of January 12th, 1970, of a meeting between Mr. Vispi, Agent Francis and the Revenue Agent Pardi.

THE COURT: I am interested in the number.

MR. MOOT: G-7.

Q Now you knew from that, did you not, that Mr. Vispi had moved his law offices late in 1968 and that he had lost a portion of his 1967 records? You knew that, didn't you?

A Yes.

Q And you knew from talking to Mr. Vispi the problems attendant to moving and trying to move all of his records from

one office to another, did you not?

A Yes, I did.

Q And you knew that the office that he moved to he stayed there less than a year and then he moved to the Statler, a third location? You knew that, too, did you not?

A Yes.

Q So that this man, between 1968 and 1970, when you visited him in the Statler, had left Mr. Magner and Mr. Garvey's partnership, moved temporarily to one office, lost his 1967 records, and then had been required to move again to the Hotel Statler where you interviewed him in 1970. You knew that, did you not?

A I didn't interview Mr. Vispi at the Hotel Statler. I am not sure of the sequence of all the moves, either. I am aware of the fact that he moved from one office to another during the period that you mentioned. And when, I don't remember.

Q And you are aware that he stated to Mr. Francis in the course of these moves he had lost a part of his records?

A Yes, I'm aware of that.

Q So it didn't surprise you that it was not until November 30th, 1970, long after, say, he had filed the '67 and '68 returns in January of 1970 that he discovered these

documents relating to the application for the extension of time to file? That didn't surprise you, did it?

A You used the word "surprise." If I can answer that, it didn't affect me one way or another. I wasn't surprised.

Q You surely investigated several taxpayers' records before, have you not?

A Yes, I have.

Q Wouldn't you ordinarily expect if the records were not in a confused and jumbled state that the request for an extension of time for the year 1967 could be located with the income tax record for the same year? Wouldn't you expect that?

A Mr. Moot, I didn't follow your question.

THE COURT: It makes no difference whether he was surprised or not. He says he wasn't surprised.

Q Would it be evidence to you, Mr. Pasquarella, that these requests for an extension of time could not be located by the taxpayer until 1967?

MR. WELCH: Objection, Your Honor.

THE COURT: I will sustain the objection. I only know what evidence there is in the case.

MR. MOOT: Well, Your Honor, the evidence in the case is before you, and I don't mean to argue it now.

THE COURT: I can find out what the evidence in the case is without anybody telling me what the evidence is. But I can't tell what the evidence in the case is if somebody say This is what he would have said."

Q With respect to the amended returns and the dollar amount of the tax, Mr. Pasquarella, I take it your investigation resulted in a decision to accept the amended returns, re-allocate the item to the proper year and no recommendation for any criminal penalties with respect to the dollar amount or the failure to have these particular items reported the first time, is that so? There is no criminal prosecution for fraudulent evasion with respect to any of these fees, is there?

A Evasion? No.

Q The only thing we are concerned with here is very simple, whether there was a wilfull or criminal intent not to file the '67 and '68 returns on time, is that not so?

A Yes, sir.

Q And your entire inquiry with respect to items which you discovered might have been missing from a given year or which Mr. Vispi, like the $1,500 brought to your attention on his own, was resolved in a civil matter, is that correct? You considered those were civil matters, not criminal matters?

A They were not resolved in a civil matter. Nothing civil has been resolved in this case.

Q But they were not referred to for further criminal action, were they?

A They were added to the amount of income that he reported on his original '67and '68 returns. They were not ignored.

Q But no recommendation for criminal action with respect to the presence or absence of these particular items on the particular returns was made, was it?

A (No response.)

Q You didn't recommend criminal prosecution because the O'Connor estate fee had been reported in one year and not in another year, did you?

A No, I didn't.

Q And you made no recommendation for criminal prosecution with respect to the fact that Mr. Vispi was unable to locate in his 1967 records the $3,500 fee, did you? You

made no criminal recommendation with respect to that item, did you?

A No, I didn't.

THE COURT: You made no recommendation of any criminal prosecution in any respect in this particular case?

A I didn't recommend any prosecution for evasion. I recommended prosecution for the wilfull failure to file timely tax returns for 1967 and '68.

Q But with respect to the other items you have been asked about, you were satisfied with the explanation that ultimately was produced by the taxpayer, and you made no recommendation for criminal action except as to late filing, am I right?

A That is right.

THE COURT: We will take a short recess.

(Recess from 11:25 A.M. to 11:50 A.M.

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q Mr. Pasquarella, in your direct testimony, I think referring to the meeting of February 20th, 1970, with Mr. Vispi, you were asked about certain checks for thirty-five

hundred odd dollars and five thousand dollars, and you gave your opinion based upon that, that you felt Mr. Vispi had the money at the time to pay the tax. Do you recall giving us that testimony?

A Yes, I do.

Q It is a fact, is it not, at the very same meeting where these checks were discussed, Mr. Vispi told you that for whatever reason he had mismanaged and failed to sue an account for a client for $6,000, because he was too busy or whatever, and he had to pay the $6,000 himself because he failed to recover it within the time for the client, isn't that so?

A Yes, it is.

Q So here was a lawyer who was so busy, his records were so confused, that he had failed to process for judgment the affair of a client, and he had to come up with the money himself, $6,000, and this was all told to you at the same meeting that you came to the conclusion that he had the money to pay the taxes, is that right?

A Yes.

Q Didn't he also explain the condition of his finances to you at the very same meeting when you had come to the conclusion that he had enough money to pay the tax?

Didn't he tell you his employer, Judge Catalano, had given him the assignment of selling a piece of property on Lafayette Avenue? Did he tell you that?

A Yes, he did.

Q And the Judge kept bugging him to get the property sold? Did he tell you that?

A Yes, he did.

Q And in the year which you say, or at the time which you say you had come to the conclusion that this poor man had enough money to pay the tax, didn't he tell you that in order to get the property sold and to satisfy his employer, he bought it himself? Didn't he tell you that?

A Yes, he did.

Q Didn't he tell you that in order to satisfy the purchase price that he had to take out a mortgage, or he had to borrow? That means he had to borrow $9,500 from the Bank of Buffalo?

A Yes, he did tell me that.

Q And in addition to a mortgage, he also had to get a second mortgage on his personal residence from a friend for $7,500, is that right?

A Yes, it is.

Q Is it still your opinion that he had money to pay the

taxes when he had these financial problems at that time?

A Yes, it is.

Q With respect to your interview of June 25th, 1970, where you made reference to the fact that a check for $3,500, dated March 24th, 1967, was discovered, which was not reported on one of the delinquent returns when filed, do you remember that part of your testimony?

A Yes, I do.

Q You recall, do you not, Mr. Pasquarella, that the year 1967 was the year in which, as reported by Agent Francis, a portion of Mr. Vispi's records were lost or misplaced when he had to move over Christmas and New Years to a new office, do you recall that?

A Yes, I do.

Q And you told us at the same meeting of June 25th that you discussed the payment of the tax with the taxpayer, but I believe you neglected to tell us on your direct examination that you told him you were not soliciting payment for any year? That is what you told him, didn't you?

A Yes.

Q And this is consistent with the policy where criminal matters are going forward, that you don't ask for payment,

isn't that so?

A That is correct.

Q So insofar as this taxpayer's failure to pay the tax for the delinquent returns was concerned, you told him that you weren't asking for money, didn't you?

A I told him I was not soliciting payment for any year.

Q You didn't tell us that in your direct examination, did you, when you were questioned on this?

A I don't recall whether I said that or not.

Q With respect to the next meeting which you have given us a portion of what you discussed with Mr. Vispi, referring to the matter of the O'Connor estate, and there there was the matter of whether the $7,000 he received for legal services as attorney for the executor should be reported in 1968, which was your claim, or whether it should be reported in 1970, which was the way the taxpayer had elected to handle it, do you recall that?

A Yes, I do.

Q And didn't Mr. Vispi say in support of his view that the matter should not be paid or declared until 1970, because the estate was open until 1970? Is that the reason he gave you?

A Yes, it is the reason.

Q And I don't believe you told us about this when you described the matter the first time, but didn't he also say that as attorney for the executor, he had been delinquent in filing the estate tax return on time?

A Yes, he did tell me that.

Q And didn't he tell you that he personally would have to pay the interest charges of $1,602 because the estate tax return had not been filed on time?

A Yes, he did tell me that.

Q Could there be any possible advantage or any criminal intent of any kind in Mr. Vispi, as a lawyer, failing to file that estate tax return on time?

A (No response.)

Q Could there be any evil purpose or bad motive for Mr. Vispi being delinquent in that tax return for the estate in your mind?

MR. WELCH: I object, Your Honor.

THE COURT: The objection is overruled.

A Are you speaking about the estate tax return?

Q Yes.

A Repeat the question.

Q Do you see in the fact that Mr. Vispi was delinquent as

attorney for the executor in filing the estate tax return for the O'Connor estate, do you see in the fact that he was delinquent there evidence of a bad purpose on the part of Mr. Vispi?

MR. WELCH: I object. It calls for a conclusion --

THE COURT: Objection is overruled.

Q Do you see any such evidence of bad purpose there?

A I don't know the facts of that estate tax return.

Q I'm just asking by reason of the fact that it is delinquent. Do you see that as evidence of a bad purpose?

A No.

Q Do you see it as evidence of an evil motive?

A No.

Q So that in addition to being delinquent on his own personal tax returns with respect to the time of filing for '67 and '68, you knew he was having the same problems for at least this one client, did you not?

A Yes.

Q With respect to the $1,500 item, which you said on the meeting of August 28th, 1970, Mr. Vispi himself told you about that, you didn't discover that missing $1,500, did you?

A No, I did not.

Q And, again, this missing item was a 1967 item which Agent Fracis reported was the year in which the records were moved to one office and another, and some had been misplaced or lost, is that so?

A Yes.

Q You told us about your last meeting or interview with a client on November 17th, 1970, but Mr. Pasquarella, you neglected to tell us that you also discussed at that meeting with the taxpayer why he was delinquent for these two years, 1967 and '68. You did discuss that at the last meeting, did you not?

A Yes, we did.

Q And in addition to the difficulty of moving his office and misplacing his '67 records, the taxpayer told you at that meeting that he was overworked taking care of his law practice and required long hours and working on Saturday and that that was one reason that he was late in filing these returns, did he not tell you that?

A Yes, he did.

Q And you knew that to be a fact because of the matters we have just reviewed, the fact that he could not file the estate tax on time for a client? You knew that to be so,

did you not?

A I knew what to be so?

Q That he had not been able to file an important estate tax return on time as well as take care of his own affairs?

A Yes, I was aware of that.

Q You knew that his affairs had become so far behind that he had let a $6,000 collection item go, and he had to pay for that out of his own pocket, you knew that as well, didn't you?

A I knew he had to pay the $6,000, yes, sir.

Q So you knew this was an individual lawyer who, at least to your knowledge, two important matters had gotten terribly behind, requiring him to reach into his own pocket to make good for his own delay, is that right?

A Yes.

Q Is it still your recommendation here that the facts indicate a bad purpose or an evil motive in being late with his '67 return and '68 return?

MR. WELCH: I have to strenuously object, Your Honor. He is calling for a conclusion from this witness which Your Honor is going to decide at the conclusion

of the Government's case.

THE COURT: Objection is overruled.

Q Do you still find evidence of bad purpose or evil motive on the part of the taxpayer as in this condition, with all of his clients and these financial problems?

A Yes.

MR. MOOT: I want to ask the witness, if he will, to produce his activity sheet, one of the items subpoenaed today, and the Revenue Agent's manual.

(Witness leaves stand.)

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 13 marked for identification.)

(Witness resumes stand.)

MR. WELCH: If Your Honor please, may I be heard? The handbook from which Mr. Moot is going to cross examine the witness, may we have an order from the Court that that be returned to the agent, and any relevant portions of this can be substituted by photocopies?

THE COURT: I see no objection to that.

MR. MOOT: None whatsoever.

MR. WELCH: Thank you, Your Honor.

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q Mr. Pasquarella, is D-13 for identification a chronological work brief, or your activity sheet, showing what you did on this case day by day?

A Yes; other than the first page, which was prepared by Special Agent Francis, the rest of it is my activity on this case.

Q Is there some reason why a portion of the first page has been blocked out, not photocopied?

A If you look at the original, the first page only covered this amount.

Q Is this photocopy a copy of entries made in your own handwriting?

A Yes, it is.

Q On or about the date shown for each?

A Yes.

MR. MOOT: Your Honor, to save the Court's time, I would like to offer this

Exhibit into evidence at this time, and we can use the luncheon break to compare the photocopy I have been given with the original, which Mr. Welch has.

Is there any objection to the offer of the Exhibit?

MR. WELCH: Your Honor, the Exhibit is hearsay, and I object on that ground. The witness is here to testify.

THE COURT: You object to the introduction?

MR. WELCH: Yes, I object to the introduction.

THE COURT: I overrule the objection.

(Defendant's Exhibit 13 marked in evidence.)

MR. MOOT: I would like now, Your Honor, to offer Defendant's Exhibit 1 for identification in evidence. I have been provided with a bound volume of the Commissioner of Internal Revenue 1968 Annual Report, which is published and sold

by the Superintendent of Documents, United States Government Printing Office in Washington, D. C. The only portion that I'm concerned with are Pages 26 through 31, which were covered by D-1.

THE COURT: That is understood, then, that from the whole Exhibit, which was marked in evidence, only those portions that you have referred to are pertinent to the case.

MR. MOOT: Correct, Your Honor.

(Defendant's Exhibit 1 marked in evidence.)

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 14 marked for identification.)

Q I'm showing you D-14 for identification, Mr. Pasquarella. Do you recognize this as Page 315.21 and 315.3?

A Yes, I do.

Q And that is the front side and the reverse side of the page I am showing you in the Special Agent's handbook, which you have produced, pursuant to my subpoena, is that

correct?

A Yes, sir.

MR. MOOT: I will offer that in evidence.

MR. WELCH: I object, Your Honor.

THE COURT: That is in evidence. The whole book is in evidence, but you pointed out those are the only two sheets you considered pertinent.

MR. MOOT: The Special Agent's handbook has been properly subpoenaed and produced, but it has not been offered. I am offering this page of this Exhibit in evidence, Your Honor.

THE COURT: What is the Exhibit number you are offering?

MR. MOOT: I am offering Exhibit D-14, Your Honor.

THE COURT: Now D-14 is two pages?

MR. MOOT: Right, Your Honor.

THE COURT: All right. It is received. Those are merely the two pages that you consider pertinent?

MR. MOOT: Correct, Your Honor.

(Defendant's Exhibit 14 marked in evidence.)

Q Mr. Pasquarella, when this case of Mr. Vispi was assigned to you, the 1967 and 1968 returns had, in fact, already been filed, had they not?

A Yes.

Q And the question which you undertook to investigate from a criminal point of view was whether this was a bad purpose or an evil motive in filing them late, is that correct?

A Yes.

Q And that was pursuant to the instructions which governed such an investigation in Exhibit D-14, is it not?

A May I see the Exhibit, please?

(Defendant's Exhibit 14 handed to the witness.)

Q I am referring to the second page, 315.3.

A The question was what, sir?

Q That the purpose of your investigation was to determine whether there was a bad purpose or an evil motive in filing the return late, isn't that so?

A Yes.

Q It is also true, is it not, that there are hundreds of thousands of returns each year which are filed late, isn't that so?

A I do not know.

MR. WELCH: I object, Your Honor.

THE COURT: Yes, there are a great, great many, and we don't need to know the exact number, I'm sure.

MR. MOOT: I have the exact number, Your Honor, and I would like to read it from the Exhibit in evidence, D-1.

THE COURT: Show it to him, and he can probably tell you without any questions.

Q I'm showing you D-1. This is the Exhibit taken from the Commissioner of Internal Revenue Service's Report for the Year 1968, and that gives right here on Page 26, does it not, the figure of a number of delinquent returns which were filed for that year, '68, and was 770,587, is that not so?

A It is correct.

Q Now, then, that total number of delinquent returns, of course, do not result in criminal prosecution, do they?

A No.

Q To result in criminal prosecution, it is necessary to find the two items which you have told us you directed your inquiry to, bad purpose and evil motive, is that not so?

A Yes.

Q Isn't it a fact that it shows on Page 1 of the same Exhibit that an analysis of criminal cases of all types is given in this table here, is that not so?

A Yes, it is so.

Q And that shows of all criminal cases of all types in the year 1968, there are 830 prosecutions?

A That's correct.

Q That is about a tenth of one per cent of the number of delinquent returns filed, isn't it?

A (No response.)

Q Whatever the percentage is, there were 760,000 delinquent returns in '68, and of the criminal fraud cases as well as non-filing cases, the prosecutions came to 800 in one year, is that so?

A Yes, sir.

Q So that in undertaking this assignment, you were fully aware of the importance of those two elements, bad purpose and evil motive, were you not?

A Yes, I was.

Q Of what witness, Mr. Pasquarella, did you ever inquire as to the bad purpose or evil motive of the defendant, Mr. Vispi?

A I don't understand the question.

Q Did you make inquiry of any third party with respect to whether the defendant evidenced a bad purpose or an evil motive by filing the returns late? Did you make any such inquiry of any kind?

THE COURT: He doesn't come to his conclusion by asking a person questions. He comes to his conclusion by his investigation, which embraces questions from a great many witnesses.

MR. MOOT: True, Your Honor, but --

THE COURT: What you want him to do is to get it down to one question that he asked some particular witness.

MR. MOOT: For example, Your Honor, I would like to ask him whether he ever inquired of the defendant's employer whether there was any evidence in the relationship between employer and employee, which would

bear on the question of bad purpose of evil motive. I want to know if he made such inquiry. That is all, Your Honor.

THE COURT: The employer might not recognize it as evidence.

MR. MOOT: That is true. He might not, but I want to know how he conducted the investigation.

THE COURT: Ask him that, then.

MR. MOOT: That is my question exactly.

THE COURT: That isn't your question exactly at all.

MR. MOOT: I will rephrase the question.

THE COURT: You are asking what he asked one particular witness.

Q Mr. Pasquarella, did you inquire of any witness the facts or circumstances of the defendant which, in your judgment, would bear on bad purpose or evil motive? Did you inquire of those two items of the offense of any third-party witness?

A I contacted several third-party witnesses in this case,

and after I made all these contacts and evaluated the evidence that I received from them, then I made the recommendation.

Q I don't think that was my question. My question was, what witness, by name, did you inquire of to determine whether there was evidence of bad purpose or evil motive?

THE COURT: Every one of your questions in your own investigation was directed to that end inquiry, wasn't it?

A Yes, Your Honor.

Q I'm showing you D-10, and this is a statement taken from the witness Enzina. Did you take that? Is that your signature?

A Yes, it is.

Q And did you make any inquiry of this witness, Mr. Enzina, as to whether there was evidence of a bad purpose or evil motive on the part of the defendant, Mr. Vispi?

A I didn't ask specifically of Mr. Enzina regarding any bad purpose or evil motive. I contacted Mr. Enzina because Mr. Vispi told me he prepared his return, and I wanted to corroborate what Mr. Vispi told me.

Q Isn't it a fact that Mr. Enzina told you that in his judgment the defendant, Mr. Vispi, was an honest and

reliable person and had done his work for all of these years?

THE COURT: Yes, but he didn't know what his answer was going to be when he asked him the question.

Q I understand, but isn't it a fact he told you that?

A He told me he was a friend of Mr. Vispi's for several years.

Q As far as he knew, he was an honest and truthful person?

A I don't know if he used those words, but he told me he was a good friend of his and he was a nice guy. I don't know exactly what he told me.

Q You didn't put that in the statement, did you?

A No.

Q You weren't really concerned when you talked to Mr. Enzina what Mr. Enzina thought about the criminal intent of Mr. Vispi, were you?

THE COURT: It didn't make much difference either.

MR. MCOT: May be, Your Honor.

THE WITNESS: I was concerned with corroborating what Mr. Vispi had told me at a prior interview.

Q Were you concerned about the honesty with which this attorney had represented that client for twenty-five years?

A My only concern was to establish the fact that Mr. Vispi prepared his '67 and '68 returns.

Q In fact, you didn't want to know that a client had been represented by this defendant for twenty-five years with impeccable honesty, did you?

MR. WELCH: Your Honor, I object.

THE COURT: Well, that is what he found out.

MR. MOOT: He didn't report it down.

MR. WELCH: This is all argument, Your Honor, for the Court. He is arguing with the witness. I object to the question.

MR. MOOT: Your Honor, I think it is highly relevant. If the central issue we are trying here is whether the defendant, Mr. Vispi, had a bad purpose or evil motive, I want to --

THE COURT: There is no question about that. That is elementary, ABC's.

MR. MOOT: Right. What I want to know is in interviewing witnesses, employers and others, whether any attempt was made to find out whether there was evidence of such a bad purpose or evil motive on the part of the defendant.

THE COURT: That is what he was attempting to find out in the examination of this particular witness, Enzina. He didn't know what his answers were going to be when he asked the questions.

MR. MOOT: Yes, but the difficulty, Your Honor, is he didn't put it down what the witness said. All he put down is that he represented him for twenty-five years and filled out his returns. He made no inquiry whatsoever about bad purpose or evil motive.

THE COURT: This is getting pretty technical. He asks the question and he gets a certain answer.

MR. WELCH: There is no question, Your Honor, about the defendant's reputation

in the community.

THE COURT: There is nothing for argument right now.

MR. WELCH: I'm sorry. I didn't hear, Your Honor.

THE COURT: There is nothing for argument right now as far as you are concerned.

MR. WELCH: Thank you, Your Honor.

THE COURT: This counsel was arguing a question.

(Pause in the proceedings.)

THE COURT: Certainly, this witness didn't have to come out and ask Mr. Enzina, "Do you think he was crooked?"

There are many other ways to get answers to questions on that.

MR. MOOT: Thank you, Your Honor. What I am trying to determine here is whether this witness made any effort to determine the honesty with which the defendant conducted his affairs as an attorney.

THE COURT: That is exactly what

he found out. He found out when he examined Enzina's testimony that he turned out to be a character witness. Then it followed he asked him how long he represented him.

MR. MOOT: That is true. The unfortunate part of it is he did not put the good character part of what he found out in the statement.

THE COURT: It was made very clear to me.

MR. MOOT: I know it was, because I brought it out on examination when the witness was brought in here, but it certainly was not put down by this agent after he got done talking to him.

For the purpose of preparing this case, whether it should or should not result in criminal prosecution, the evidence which he found out from Mr. Enzina, which was favorable, was left off, and the only part that was put in was the mechanical thing that he knew how to fill out --

THE COURT: What was the favorable

part left out?

MR. MOOT: That he was an honest man and that he was so regarded by Mr. Enzina. That was not put down.

THE COURT: That wouldn't make much difference, either, whether he was an honest man or so regarded. That wasn't the question at all. The question was had he late filed his income tax return. Many good men will late file their income tax returns and they are pretty well regarded in society, too.

MR. MOOT: That is true. In fact, if the figures are correct, men and women are seven hundred odd thousand who file them late, and they are certainly not defendants in criminal prosecutions.

CROSS EXAMINATION CONTINUED

BY MR. MOOT:

Q Let me ask you about the income tax return for the year 1966. Did you have an opportunity to look at that?

A Yes, I did.

Q In the course of your investigation where you were trying

to find evidence of bad purpose or evil motive, did you at any time interview the employer of the defendant?

A Judge Catalano?

Q Yes.

A On one interview, and I believe it was September 25th, 1970, I asked Mr. Vispi how I could schedule an appointment with his employer, Judge Catalano. At that time Mr. Vispi told me, "Mr. Pasquarella, Judge Catalano is not aware of this investigation, and if he found out, I would lose my job. He would fire me."

As a result, I did not interview Judge Catalano.

Q Did you interview the attorneys with whom Mr. Vispi shared his office space or practice under the same partnership name, Mr. Garvey, or Mr. Magner?

A The only contact I made with Mr. Garvey was contact regarding fees paid by Mr. Garvey to Mr. Vispi for legal services rendered.

Q That was the total investigation with respect to bad purpose or evil motive that you conducted with respect to these men who practiced law with the defendant?

A With Mr. Garvey.

Q That was the total? You made no inquiry of Mr. Magner --

THE COURT: He might have had

many evil purposes that had nothing to do with tax questions at all.

MR. MOOT: True, Your Honor, but it is also very possible that if he inquired of the people that the defendant was working with, he would have discovered what we have discovered here on the trial.

MR. WELCH: Objection, Your Honor. If Mr. Moot wants to offer proof --

THE COURT: I'm not going to suppress any attorney when he wants to make an argument, you or anybody else. Anybody can make any argument they want to.

MR. WELCH: Thank you, Your Honor.

THE COURT: Unless I think it is frivolous.

MR. MOOT: Well, it should be apparent that --

THE COURT: You are not being stopped.

MR. MOOT: I understand. I want to find out from this witness whether he made inquiry of the lawyers who were

practicing --

THE COURT: Go right ahead with your question. Don't tell me what the purpose of it is.

Q Did you make any inquiry of the lawyers who shared space with Mr. Vispi as to the facts and circumstances under which his records were put in packing boxes and removed from the premises over Christmas of '68? Did you make any inquiry of that?

A I didn't.

Q Did you make any inquiry of the men he shared the practice with as to whether his work was done on time or whether he was overworked?

A No, I didn't.

Q Did you make any inquiry of the attorneys he practiced with as to his health and his ability to perform work?

A No, I didn't.

Q Did you make any inquiry of the attorneys he shared his practice with, with respect to his ability to do his legal work for his clients on time?

A No, I didn't.

Q Did you make those inquiries of any third-party witnesses?

A What inquiries?

Q As to what the defendant told you --

THE COURT: Whether he got his work out on time.

MR. MOOT: Right.

THE WITNESS: No, I did not.

Q The defendant told you that among the reasons he was not able to get these tax returns filed on time was that he was overworked, working nights and Saturdays, that his health was bad, that he gave you examples of how he, himself, had not been able to do work for other people, even though it would result in payment if he did. Now did you check that with any third party witnesses to see if what he told you was, in fact, true?

A Yes, I did.

Q Did you check whether he was able to get his work out on time or what his work record and health was with the attorneys he shared his practice with?

A I did not speak to the attorneys. I did speak to a particular witness, Mr. Naples.

Q Who is Mr. Naples?

A Mr. Naples was a client of Mr. Vispi's.

Q What was the nature of the relationship?

A Mr. Naples told me that he hired --

Q No. What was the relationship? What was Mr. Vispi doing for Mr. Naples?

A Mr. Vispi was hired to secure a note receivable of Mr. Naples.

Q What was the result of your inquiry of Mr. Naples?

A Mr. Naples told me that he received $6,000 from Mr. Vispi.

Q Was this the $6,000 that Mr. Vispi said he had to spend his own money because he didn't collect the note on time?

A That is what Mr. Vispi told me, yes.

Q What other inquiry did you make with respect to the ability of the defendant to do things on time from third-party witnesses?

A I contacted Mr. Paul Missana.

Q What was the piece of business Mr. Vispi was doing for him?

A Mr. Missana had retained Mr. Vispi to secure a mortgage for him to purchase a piece of property.

Q And did he get that done on time?

A I don't know the time that he got it done, but I know Mr. Vispi secured the mortgage himself.

Q And Mr. Vispi explained that to you, didn't he?

A Yes, he did.

Q That because he had not been able to get the mortgage commitment through the lending institution, he had to go

out and get it from friends, isn't that so?

A I do not recall where he got it from, but he did get a mortgage.

Q So this was another example where Mr. Vispi was not able to get the mortgage from a lending institution on time, and he had to personally go out and raise the money some other way?

THE COURT: That may not have been the reason why he didn't get it on time. There may have been some other reason that he didn't get it on time or didn't get it at all.

Q You discussed this with Mr. Vispi as well, did you not?

A Yes, I did.

Q Did not Mr. Vispi tell you because he was not able to get the mortgage commitment on time that he went out and arranged it on his own?

A Yes. That is what he told me.

Q He told you because of his overwork and neglect, he hadn't made the application on time, and in order to meet the closing date, he had to go and raise it somewhere else, isn't that what he told you?

A That is basically what he told me, yes.

Q So this is one more evidence of delinquency in Mr. Vispi's private practice, isn't it?

A Yes.

Q So far every inquiry that you have made of third-parties with respect to Mr. Vispi's ability to get his work done on time has corroborated entirely what Mr. Vispi told you, that he was hopelessly overworked and grossly behind, is that not so?

MR. WELCH: Objection, Your Honor. He is misstating the evidence.

THE COURT: I will sustain the objection.

MR. MOOT: I will take out the characteristics.

THE COURT: I will sustain the objection.

MR. MOOT: I will rephrase the question.

Q The two incidents that you have told us so far, the third-party witnesses corroborated what Mr. Vispi told you, did they not?

A Yes, they did.

Q Did you assist in the preparation of this case for trial?

A Yes, I did.

MR. MOOT: Would you mark this for identification?

(Defendant's Exhibit 15 marked for identification.)

Q Do you recognize D-15?

A Yes.

Q Is that a list of witnesses who were subpoenaed for this trial?

A Yes.

Q Were those witnesses suggested or selected by you?

A They were selected by Mr. Welch and myself.

Q Who is Mr. Gagliardi?

A The gentleman sitting right there (indicating).

Q And he is a Special Agent in the Intelligence Division?

A Yes.

Q Was he assigned the responsibility of serving the subpoenas on these people?

A Yes. Some of them he did serve, he and another agent.

Q By my count, Mr. Pasquarella, there are twenty-two witnesses aside from the employees of the Internal Revenue Service that received subpoenas to appear here at this trial, is that correct?

A Twenty-two is correct.

Q Mr. Pasquarella, these witnesses were clients of the defendant, Mr. Vispi, or the bank officers where he banked, were they not?

A Most of them were clients. Two of them were bank officers, and there are some other ones also.

Q And after Mr. Gagliardi delivered the subpoenas to these twenty-three people and came back and reported, the decision was made not to call any of them with the exception of Mr. Enzina, is that correct?

THE COURT: There is no obligation on the part of any party to call all the witnesses they have on the list. They might very well conclude that seventy-five per cent of their testimony would be superfluous.

MR. MOOT: I appreciate that, Your Honor. But anyway the decision was made not to call them, isn't that so?

A Yes, sir.

Q Is the reason, in part, why the witnesses were not called to testify because Mr. Gagliardi found out that they would all testify favorably to the defendant?

A No, that is not the reason.

Q Is that the reason why Mr. Brennan was advised he need not appear?

A I don't know what Mr. Brennan was advised, as far as the reason for not appearing.

Q Wasn't one of the effects of issuing these trial subpoenas to fellow lawyers, clients and bankers, to involve the people that the defendant relied upon for his living in this criminal tax case?

MR. WELCH: Objection, Your Honor.

THE COURT: I wil sustain the objection.

Q Let me put it this way. Was there any intention on your part, Mr. Pasquarella, in making up such an all-encompassing list, that you had hoped that the defendant would avoid the trial, to avoid involving these people in it? Did you have any such intention?

MR. WELCH: Objection, Your Honor.

THE COURT: I will sustain the objection. In the first place, there isn't any evidence that this witness is the one who directs the trial.

MR. MOOT: Well, the witness did say he prepared the list, and I want to

know what intent he had in preparing such an all-encompassing list.

Q Did you have any such intention in preparing this list?

MR. WELCH: Objection, Your Honor.

THE COURT: Objection is overruled.

THE WITNESS: What intention?

Q The intention by involving this many people that perhaps the defendant would not stand trial?

A I had no such intention.

Q You knew the effect it would have on his practice and his person, did you not?

A No.

Q Are you saying that you didn't know what effect trial subpoenaes delivered to this number of clients and fellow lawyers would have on him? You say you don't know what effect it would have?

A What effect it would have on him?

Q Yes.

A I know the purpose of why these people were subpoenaed.

Q You don't know what effect it would have?

A (No response.)

Q Just answer, and if you don't know, say so.

A I want to make sure that I understand the question as

far as you say what effect it would have on him.

THE COURT: That question certainly can't be universal, because in the effect of Enzina, it certainly had a good effect.

MR. MOOT: That is partly my point, Your Honor. If they all appeared, it would have had a good effect, and that is why they are not here.

Q Did you consider the effect these trial subpoenaes would have delivered to the clients of a sole practicing lawyer? Did you consider that?

MR. WELCH: I have to renew my objection, Your Honor.

THE COURT: I sustain the objection.

Q Did you ask Mr. Vispi, or did you advise Mr. Vispi, that you would be contacting some of his clients to corroborate what he told you?

A Yes, I did.

Q It is a fact, isn't it, that he said he had no objection whatsoever if you did that?

A That is correct.

(Pause in the proceedings.)

MR. MOOT: That is all I have,

Recess.

Your Honor.

(Witness excused.)

(A luncheon recess was taken at 12:45 P.M.)

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Discussion.

Rochester, New York

Friday, October 24, 1975

2:45 P.M.

MR. WELCH: Would you mark these for identification?

(Government's Exhibits 10 through 15 marked for identification.)

MR. MOOT: Your Honor, previously at the recess yesterday, I had examined each of these Exhibits. I have no objection. I am prepared to stipulate that if the officers of the appropriate banks were here in person that they would testify that these are Xerox copies of the bank records in question, showing the items on them.

MR. WELCH: If Your Honor please, I offer them in evidence.

THE COURT: They are received.

(Government's Exhibits 10 through 15 marked in evidence.)

MR. WELCH: If Your Honor please, I also offer for the Court's consideration

Government Rests.
Motion for Acquittal.

Title 26 of Federal Regulations, Section 1.6081-1(b), which has to do with the regulations concerning applications for extension of time to file income tax returns, requiring that they be made on or before the date on which the returns are due.

In addition, I offer for Your Honor's consideration Title 26, United States Code, Section 6081(a), which is the part of the Internal Revenue Service Code which indicates that no such extension of time to file an income tax return will be granted for a period of more than six months, except as to taxpayers who are abroad.

I offer those in evidence, Your Honor.

THE COURT: They are received.

MR. WELCH: At this time, Your Honor, the United States rests.

MR. MOOT: Your Honor, on behalf of the defendant, Mr. Vispi, I would like to move for an acquittal, pursuant to

Rule 29 on two grounds: The first grounds of the motion relate to the act charged in the Information. I want to make clear, Your Honor, that I am not basing the first grounds on the insufficiency of the lack of the Information. I am basing the first grounds for this motion for acquittal on the fact that the act charged in fact has not been proven.

The Information in the first part recites the statutory duty to file an income tax return and says Mr. Vispi was charged with such a duty because he had a gross income in a given figure. I do not attack that part of the Information. This is simply a recitation of one element of the crime, and that is that he is, in fact, a taxpayer; that he does, in fact, have gross income in the stated figure; and that by reason of that, he is under a duty to make and file, to use the words of the statute, a return on or before April 15, 1968.

The difficulty with the proof in

this case, and again, I remind Your Honor I'm not attacking the sufficiency of the language -- I am attacking the proof of this case.

The only act charged in this Information against the defendant, Mr. Vispi, is contained in the last portion, and there it says that while knowing the foregoing facts, that is, the duty to make and file a return, "he did wilfully and knowingly fail to make said income tax return to the said District Director."

Now, in fact, that is not so. There is absolutely no dispute about that. He did both make and file his return. In fact, he made and filed the return four years before this Information was laid. There is no reference there that he did fail to make said return, either as required by law or on or before such and such a date. He is charged here specifically with not making his income tax return, and, in fact, he did do that.

Motion for Acquittal.

This Information in this language, and I have examined the authorities supplied to me by the Government in the case of Ming, and the case of Ming deals with the sufficiency of the language. I am not questioning the sufficiency. What I am saying is what they charge him with failing to make a return -- and, in fact, he did do -- and the proof shows that he did it, and that he did it four years before the charge was laid, under those grounds, and I won't argue it longer at this time, Your Honor. That is my first basis for saying that both Counts of the Information should be dismissed.

The second grounds for an acquittal pursuant to Rule 29 are failure to prove all essential elements of the claim beyond a reasonable doubt.

Now as a matter of law, that used to be a dispute between what is meant by "wilfull" in a felony case, and what is meant by "wilfull" in a misdemeanor case.

I direct your attention to United

States against Bishop. The Supreme Court in '73 attempted to resolve whatever differences was indicated by the different Circuits as to a misdemeanor or a felony. "Wilfull" now means the same in both, according to the Supreme Court.

The difference is the particular act is different in a felony than it is in a misdemeanor, but the criminal intent is defined the same for both, ever since Bishop, which was decided in 1973. And as Your Honor said earlier, that element in the case is elementary. It means you must show beyond a reasonable doubt a bad purpose or an evil motive or "wilfull" defined in words similar to those. Those are the classic words used in Bishop. Those are the words that we claim have not been proven beyond a reasonable doubt in this case.

I don't intend, Your Honor, to review all the facts at this time, but I want to point out what we believe the evidence shows so far.

Motion for Acquittal.

The Government proved that the defendant knew that he had to file a return. I don't think there was any dispute about that from the very beginning. From the very beginning the defendant said he intended to file a return. He had filed returns for many years previously. At the time he first spoke to the Government, he was, in fact, audited for returns which had been filed. He did returns for other people. I think we spent an unnecessary amount of time in proof on that. Of course, he knew he had to file the return.

The Government also proved, or attempted to prove, that there was no agreed or valid extension of time to file a return. And the evidence of that I won't belabor again, but the fact that the extension had not, in fact, been granted, it is undisputed, at least, for the year '67 that he did apply for it. Apparently, he applied for it on time. The fact that the Government did not give him the requested additional time, or

the fact that the statute would have not permitted an application for extra time after April 15th, again, does not bear upon the question we are talking about. The question we are talking about in this case is bad purpose or evil motive.

Affirmatively, I believe, Your Honor, and I think this is fair to say, that again and again throughout the testimony, the agents have testified that the taxpayer intended to file. He promised them he would do it on repeated occasions. He explained the difficulties he was having because of the state of his records and losing some of the records for 1967 when he moved over Christmas of that year to his new offices. He explained the financial problems. He explained his family problems and his health problems, and in all of those explanations, Your Honor, all of them runs constantly, "I will do it. I intend to do it." There is no question he intended to do this. There is no question that he, in

fact, did do it. He may have done it a few weeks later than his last promise, but there is no question about the fact that he intended to do it, and he did, in fact, do it.

We say, based upon that, the essential element of bad purpose or evil motive or deliberate intention not to file, have not been proven, and we believe that the case on the two grounds stated should be dismissed.

First, the only act they charge him with his not filing. He, in fact, did. In fact, he did four years previously.

Secondly, they failed to establish the bad purpose or evil motive required of an intentional evil design to violate the criminal laws without which there can be no crime in this case.

MR. WELCH: If Your Honor please, the Government does oppose this motion.

As to the first basis of the motion, Your Honor, as I indicated in the brief

that we filed yesterday, Your Honor, the Ming case construed the words "said income tax," which Mr. Vispi is charged with "wilfully failing to file said income tax return," and the term "said" is defined as a return which is required by law to be filed on or before April 15, 1968. And if he did not file on or before April 15, 1968, as to Count One, and on or before April 15, 1969, as to Count Two, then he failed to file said income tax return, that is, one that was due for those dates, a timely return.

And we submit, Your Honor, under the interpretation of the very wording of this Information set forth in that Ming case, the Government has proved that he failed to file said income tax return, a timely return.

As to the second basis, Your Honor, the question of wilfullness, the Government's proof has established wilfullness. It is a conclusion for Your Honor to draw from the

circumstances surrounding in which the entire affair took place. First of all, Your Honor has the pattern in which he has failed to file the tax returns in '65 and '66 and then failed to file again in '67 and '68.

If Your Honor please, you have what the Government construes and requests Your Honor to find a deliberate lie to the Revenue Agent Pardi. When he was conducting the audit for '65 and '66, Pardi asked Mr. Vispi if he had filed his '67 and '68 returns and was told he had. And we suggest to Your Honor that this is clear evidence of bad purpose or evil motive.

Finally, Your Honor, it has been argued that Mr. Vispi made an application for an extension of time as to one of the years in question. What we respectfully ask Your Honor to examine is that application for extension of time and see in what good faith it was offered.

He leaves blank the critical ques-

tion about his earlier returns. All he had to do was check it off or not check it off "Yes" or "No." And that part has been left blank.

We submit, Your Honor, it is not a good faith application.

Your Honor, Mr. Moot made a statement that each of the these agents testified that Mr. Vispi intended to file, and intended to file. I think that is a conclusion for Your Honor to draw. We are arguing that it is an erroneous conclusion.

Mr. Vispi told the agents he intended to file, told them he intended to file, and told them time and time again but never did file. From that we consider, Your Honor, we think --

MR. MOOT: Just a moment. If I heard you correctly, you said he never did file, but he did.

MR. WELCH: If Your Honor please, if I am misstating whatever took place, I'm sure Your Honor is aware what the evi-

dence is.

The point I'm making, Your Honor, is the same set of facts which Mr. Moot argues shows an intent to file can be found by Your Honor to show an intent not to file.

It is on the basis of these arguments, Your Honor, and the cases which establish that this pattern of failure to file demonstrates wilfullness, and we submit that the motion should be denied.

THE COURT: I deny the motion. The case will go ahead.

MR. MOOT: I'm sorry, Your Honor. I didn't hear the ruling.

THE COURT: I deny the motion. The case will go ahead.

MR. MOOT: The defendant is ready to proceed. I would like to know if there is any request for separation of witnesses on the part of the Government.

MR. WELCH: I would request that, Your Honor. I have no idea what these wit-

nesses are about to testify to. If they are just character witnesses, I have no request to separate them. If they are not just character witnesses, then I would request to separate them.

MR. MOOT: Their testimony, Your Honor, I don't think will be particularly long as to these witnesses. They are partners or lawyers who practiced with Mr. Vispi. They will testify as to the facts and circumstances under which Mr. Vispi was working during the years '67, '68 and '69, during that period, and some will also testify as to character as well. But most of them will testify as to the difficulties which arose when the partnership was terminated, the work habits during the period of the partnership, the difficulties Mr. Vispi faced, and some will testify as to character, who are in the best position, and that will be the proof.

MR. WELCH: I would request that there be a ruling on separation of witnesses.

THE COURT: The witnesses will be separated.

J A M E S A. G A R V E Y,

called as a witness by the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOOT:

Q What is your business or profession?

A I am an attorney with offices in Buffalo, New York.

Q And prior to January, 1968, did you practice law with the defendant in this case, Mr. Vispi?

A Yes, I did.

Q Under what name or style, and whereabouts did you practice law with Mr. Vispi?

A Well, originally I had offices in the Genesee Building and was a member of the firm of Montasanto, Garvey & Magner, and Mr. Vispi, who specializes in real estate, did all of our title work and whatever real estate law consultation we wanted.

In the late Fifties my office began to represent the Maccabees Mutual Insurance Company, which was a Michigan-based life insurance company that was going to undertake the writing of real estate mortgages in

the Western New York area, and we were going to represent the Maccabees in the mortgage work at that time.

We had Mr. Vispi doing all of the title work for us and whatever real estate closings that were required in those mortgage c' ings.

After a year or two, and I can't remember the exact date, he moved from, I believe, the Ellicott Square Building to the Genesee Building and took an office contiguous to ours and operated as practically part of our firm, although, he was not a member of the firm.

Q If I can interrupt, this was because your firm had undertaken extensive real estate practice in those years, and did there come a time when your firm moved to the Hotel Statler?

A Yes. In 1962 we move to the Statler Hilton Hotel, and our firm name was changed -- Judge Montasanto had died at that time -- and we then became known as Garvey, Magner, Vispi & Sullivan. The defendant, Joseph Vispi, was a nominal partner in our firm. His name was on our letterhead. He operated and maintained his own separate practice but was a nominal partner of ours and continued to handle whatever real estate work that came into our office as ostensibly a partner in the firm.

Q Can you tell me about Mr. Vispi's office and his records? Were they located within the office of your firm?

A Yes. He had separate filing cabinets, but they were all contained physically within the confines of our office.

Q Can you tell me any significant observation you are able to make with respect to whether Mr. Vispi was able to get his work done on time which you assigned to him for the Maccabee Insurance Company?

A I had a great deal of opportunity to witness that, and Mr. Vispi was continually behind in getting the work done, and not only with the Maccabees but with almost all the work that we would give him. It was a matter of keeping after him to get title reports into us or keeping after him to get any work done. And I had received letters from the President of the Maccabees, from the legal counsel of the Maccabees, in Detroit as well as from the Mortgage Department, pleading with me to get Mr. Vispi to complete the files. Principally, it would be a delay in sending the mortgage instrument and the other closing papers back to the Home Office after the closing had taken place and all too frequently a failure to get the fire insurance policy that should have been turned over to us at the time of the mortgage closing,

which would list the Maccabees as having a mortgage interest in it, and sometimes that would go for weeks or months before we would get that policy into our possession and on into the Maccabees.

Q When this work which Mr. Vispi was doing fell behind, did you speak to him about it?

A Oh, yes. I spoke to Joe all the time about it, both hoping to help correct his habits as well as to mollify our own clientele. I had other examples of his inadequacy in performing the things he was supposed to. It wasn't because Joe wasn't working hard. He would spend --

Q Would you explain the hours he worked and how hard he worked?

A Yes. He was almost always the first one in the office in the morning, and it was a rare night that he didn't stay in the office and work until nine, ten or eleven o'clock. His problem was instead of taking care of his good clients and getting that work done, he would be devoting his time for some inconsequential matter on some client that would plead on his shoulder and beg for his help. He would get in his car and drive out to Lockport to have a deed signed rather than have somebody come back into his office and sign it, as I would have

done. I remember one instance where a bellhop had a government lien imposed upon his salary at the hotel, and I think it amounted to a total of $150. And while I was waiting for Joe to get work done for me, he spent the whole day over in the Federal Building trying to extricate at least part of this man's income for him, and he would have been better off paying the $150 and saving his time, but this was the type of thing that Joe would do. He was just too generous with his time, where he should have been conserving his time and putting it to more important matters.

Q Let me interrupt, if I may. Is it fair to say, then, that he put his own work aside for the problems of other people who interrupted him and bothered him and made requests?

A Continually.

Q Did this lead to an unsatisfactory condition where you had to terminate the relationship between Mr. Vispi and your firm?

A Yes. I remember one night when I was working in the office about nine or nine thirty, and Joe came in and he had been to the dentist in the late afternoon, that afternoon, and his face was badly swollen, and he was

subject then to very severe headaches, sweating, and he came in and sat at his secretary's desk and he wrote letters for an hour in longhand, which he was wont to do, instead of using dictating equipment, which we have tried and tried to get him to use, but he would sit down and write all this out in longhand, very meticulous handwriting, and leave it so his girl would have work to do the first thing in the morning. This was not a conservation of his time, and we would talk to him and try to get him to change, and he would say, "Yes, I'm going to do it, and I should do it," but his method went on and on and on.

Q Can I interrupt? Did there come a time when it was necessary to terminate the relationship, and when was that?

A Yes. In 1967 my firm, the firm of Garvey, Magner, Vispi & Sullivan was undertaking a merger with another firm, Pritchard, Kenny & Bush, and we had arranged for that during the latter part of 1967, and on January 1st of '68 the merger was consummated and Pritchard, Kenny & Bush moved over to our suite in the Statler, and the firm name was then changed to Pritchard, Garvey, Magner, Kenny, Sullivan & Bush. And frankly, we probably could

have made physical arrangements for Joe Vispi to stay on with us, but I felt we were having so much difficulty with our clients trying to excuse him, and he appeared to be one of our partners, even though he wasn't, and we were receiving the blame for his inadequacies from our own clients.

Q In any event you had him terminated?

A We terminated him.

Q Let me ask you this. At the time you were making the new firm arrangements, were physical changes taking place in the office? Were new partitions being built?

A Oh, yes. There was a mess in there. The hotel had to make a considerable amount of physical changes for us. There was plaster all over the place and new walls going up, new panelling and so forth.

Q What happened to Mr. Vispi's records in the course of this remodeling work on the tail end of 1967? Did they have to be moved from their regular place to a different place or not?

A They had to be moved, and I don't know when Joe made the arrangements to move out.

MR. WELCH: I object to it, Your Honor.

THE COURT: Objection is overruled.

Q Go ahead.

A I don't know when he had made his arrangements as to where he was going to, but typical, he waited until the last minute before he began his move, and then, of course, everything was in confusion for him. In fact, the office was physically in confusion because they hadn't even finished the remodeling at that time.

Q So when you say "the last minute," you are talking about the tail end of December, 1967?

A That is correct.

Q Remodeling was going on, packing up Mr. Vispi's records were going on?

A Correct.

Q Again, Mr. Vispi hadn't made advance plans to take care of them?

A To my knowledge he had not. I think he let it go again until the very end, and then everything was in confusion for him.

Q Mr. Garvey, because you have practiced with Mr. Vispi, I would like to ask you, are you familiar with Mr. Vispi's reputation for truthfulness, integrity and honesty as a law-abiding citizen in the speech of people

in the community?

A He has an excellent reputation for honesty, and as to his reputation, of course, I wouldn't have had him associated with my firm if it was otherwise.

Q How long have you known Mr. Vispi?

A I met Mr. Vispi in September of 1946 when we both entered the University of Buffalo Law School as freshmen, and I have known him continuously since that time.

MR. MOOT: Thank you.

You may ask.

MR. WELCH: I have no questions, Your Honor.

J O S E P H C. V I S P I,

the Defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOOT:

Q Mr. Vispi, what is your profession?

A I am an attorney at law.

Q And how long have you been licensed to practice law in the State of New York?

A Since 1949.

Q And were you at one time, as Mr. Garvey has just ex-

plained, associated with his firm in the Hotel Statler?

A Yes, sir, I was.

Q And referring in particular to the events of 1967, can you describe what happened to your practice and your records in December, 1967, when you were required to move from that establishment to another? Would you describe that in your own words, please?

A Towards the latter part of 1967, I found myself confronted with a situation where I had to move, but I had no office to move to. During that period of time, the office in which I was working with Mr. Garvey and other members of the association was being remodeled, and a number of my records were placed in cardboard boxes along with other files which were the files of the other members of the association, and to the best of my recollection, I was not able to move those boxes which I thought were all mine until, I believe it was, New Year's Eve, or two days before New Year's Day of 1968.

Q What was the date in which Mr. Garvey and his partners had told you it would be necessary for you to leave the Hotel Statler in order for the new people who were joining the firm to come in?

A On or about the end of December, 1967.

Q So the matter you have described was a matter of a day or two before that?

A Yes, sir.

Q Did you have some problem with your health also over the holiday season in that year?

A Yes. I have had for a number of years a prostrate condition which has flared up from time to time and culminated in an operation for its removal in 1973.

Q I am just asking now, Mr. Vispi, about December, 1967, and the problems that were facing you with respect to the move and the changing of your records out of Mr. Garvey's office?

A Well, as I had indicated, Mr. Moot, I had prostrate trouble and I also had problems with my stomach. I had somewhat of an ulcer condition. During the year, to the best of my recollection, my son had been in the hospital and was operated on. He had his jaw resectioned and wired for two months, and I believe that during that year also my wife had been ill.

Q You are married?

A I am.

Q What is your wife's name?

A Theresa.

Q How long have you been married?

A Next year will be thirty years.

Q Happily so, I assume?

A I believe so.

Q How many children do you have, Mr. Vispi?

A Two, sir.

Q And how old are they and what are they doing?

A My son is twenty-six years old and works in the central bookkeeping system for Marine Midland Bank Western in the Central Office. My daughter, Celeste, is twenty-four years old and is a second-grade teacher at Allendale Elementary School, West Seneca, New York.

Q Did you make arrangements prior to December, 1967, for office space to move your things to?

A Mr. Moot, I did not take concrete steps for the move which I had been aware of for some period of time. By "some period of time," I mean two or three months until the very end of the year.

Q Then how did you happen to solve the problem where you were going to put your files, your records, and conduct your practice?

A To the best of my recollection, there came a time during the Christmas holidays when I came upon George Trempor,

a practicing attorney in the general vicinity of Main and Court Streets in Buffalo. I explained to him my problem about moving, about having to move by the end of the year. Mr. Trempor said to me, "Joe, as you know, I have a suite of offices at 266 Pearl Street. Walter Mahoney will be ascending the Supreme Court bench on the 1st of January, 1968, and we will have a suite available for you."

Q So that when Mr. Mahoney moved out of his office, you went into that office?

A I did, sir.

Q How did you get your files and cartons from the Garvey office to the new office?

A I personally, with the help of, I believe, one or two friends, removed the cartons of my records from Garvey's office to the new office building, as well as the furniture.

Q When you got to the new location with these cartons and records, what did you do with respect to the preparation of your 1967 income tax return?

A Mr. Moot, during the period of time after I moved into the new office, I made a number of attempts to gather up all of my documents for the purpose of preparing my

income tax return, either personally, or to put together all of the records which are needed to submit to Mr. Capollo, an accountant, for the purpose of preparing the income tax return for the year 1967.

Q Can you tell me whether or not you were able to complete this work in preparation of your 1967 return before April of 1963? Were you able to get that work done during that period?

A No, I was not, Mr. Moot.

Q Were any of your records with respect to 1967 missing during that period?

A Yes. There were quite a few. As a matter of fact, I had to reconstruct a great deal of my records, not only for purposes of clients' files but also for the purpose of having the information for the purpose of preparing the income tax.

Q Did you, in fact, prior to April 15th ask for an extension of time in which to complete this work?

A Yes, I believe I did.

Q Was it your intention then to complete the work in preparing your '67 return within the time allowed?

A At all times one of my primary concerns was to take steps to obtain the necessary information for the purpose of

preparing the income tax returns. Yes, at all times I did intend to do that.

Q Was the same true with respect to your 1968 return?

A Yes, sir.

Q If you had intended to file these two returns, what prevented you from doing it?

A As I previously indicated and testified, Mr. Moot, there were a number of factors involved. The move out of Garvey's office into the new office in 1968 was a very traumatic experience for me. I had been associated with classmates for a period of many years, and it took a long time for me to accept the fact that although perhaps I didn't recognize it at that time, that I would no longer be with them. I was very fond of them as they were of me. It crushed me. And the time spent in trying to set up a new office, getting my records together, getting my new correspondence ordered, and then after I moved into the new office building in 1968, I found myself in the throes of an intra-office squabble with other people who were left there after Mr. Trempor moved out shortly after I moved in.

Q So Mr. Mahoney left and Mr. Trempor left and the new office you were in was in a state of transient tenants?

A As a matter of fact, there was a big squabble as to the assignment of a lease and entering into a new lease, and very frankly, I didn't know whether I was coming or going.

Q Did this condition as it existed in the office to which you removed your records result in your having to move again?

A Yes. I had to start thinking about another office in the early part of 1969, because the Western Savings Bank, which was the owner of the building, and not having been able to receive an executed lease from myself and other members, and we couldn't do that because we couldn't get along, and they asked us to leave. And I eventually left in the late spring or early summer of 1969.

Q So there were two moves of your place of practice and your records within an eighteen-month period?

A Yes.

Q And a curtailment of a long-time association with fellow classmates and lawyers in the Garvey firm?

A That is correct.

Q You were present and heard Mr. Garvey discuss the problems attendant to your practice and the hours you worked, and you were present here during his testimony?

A Yes, I was.

Q Can you describe for us yourself the hours you worked and what difficulty, if any, you experienced in getting the affairs of your clients done on time?

A During all the years of my practice, I unfortunately have not made use of a dictating machine, and more frequently than not, I would write out briefs and I would write out correspondence, I would write out title reports. Most of my work was done in that fashion. And it did take a great deal of time. I must admit that I was behind in many of my matters insofar as taking care of clients, and so much so, there were times I had to, in order to save face, to avoid criticism, to have claims filed against me because of failure to do something promptly, even though I had intended to do it promptly, and I had promised people that I would do it promptly, that I would have to dig into my own pocket or borrow money in order to pay for my mistakes.

Q Mr. Vispi, were you present when Agent Pardi and Special Agent Pasquarella testified?

A I was.

Q Did you hear the testimony with respect to the $6,000 Naples matter?

A I did.

MR. MOOT: If Your Honor please, I wonder if we could have a short recess while I check some of the records of the agent's testimony. It will take just a few minutes.

THE COURT: All right.

(Recess from 3:30 P.M. to 3:50 P.M.)

DIRECT EXAMINATION CONTINUED

BY MR. MOOT:

Q Mr. Vispi, before the recess, you had described to us the problems attendant to your repeated moves of your office, and were you present when Mr. Garvey testified with respect to the delinquency in your work for the client Maccabees and others while you were associated with the Garvey firm?

A I was.

Q And can you describe what efforts you made after January, 1968, to keep up with your work, and at the same time to proceed with the preparation of your 1967 and '68 return?

A After I moved into the new office building in 1968, I didn't make an attempt to put together the information from my records that were in the boxes following the move,

to have the necessary information for the preparation of my income tax returns.

Q Did the press of clients whose work was behind continue during that period as well?

A The press of my clients' business was very demanding. The press of other activities, working for Judge Catalano, and I had some continuing personal illness problems. I had the problem of rearranging my office, and almost at the same time of thinking about what to do in view of the new squabble that I had with the new associates in the new building.

Q Did there come a time, then, in April, in addition to these problems, when you were visited by a Revenue Agent, Mr. Pardi?

A I recall that I was initially contacted, I believe, sometime in April of 1969 by Mr. Pardi.

Q I want to show you Defendant's Exhibit 3 in evidence, and this is the activity record for Agent Pardi, and it reads: "4-22 -- Mr. Vispi," and then the entry, "Needs more information. Call later."

Does that refresh your recollection with respect to the time of Mr. Pardi's first visit?

A Yes, it does.

Q And what was the nature of his inquiry of his first visit in April of 1970?

A I believe that prior to that specific date, Mr. Pardi called me on the phone, introduced himself over the phone, and stated that he wanted to see me in my office with respect to an audit for the 1955 and 1966 tax returns. He thereafter did come to the office, and I believe it was on the date indicated on that Exhibit and spent several hours in my office, after having introduced himself and identified himself with his credentials, that he was a Revenue Agent of the IRS and proceeded to discuss various phases of the information appearing on my 1965 and 1966 tax returns.

Q At that meeting, the first meeting with Mr. Pardi, what, if anything, was said with respect to 1967 and '68.

A Absolutely nothing.

Q Were you present in the courtroom when Revenue Agent Pardi gave his testimony?

A I was.

Q And did you hear him say that at the first meeting you told him the '67 and '68 returns had been filed when, in fact, they had not been filed?

A I heard him say that.

Q What is your recollection of the conversation in that respect of the time of the first meeting?

A Mr. Moot, there is absolutely no doubt in my mind that on that day, the first day he appeared in my office, nothing, absolutely nothing, was said about my 1967 and 1968 returns. We spent several hours in the office going over and reviewing the material, the information that appeared on my '65 and '66 returns.

Q Again, I'm going to refer to Defendant's Exhibit 3 in evidence, the entry for April 22nd reads, "4-22 -- Mr. Vispi 8." Then there is the entry, "Needs more information. Call later."

That, Your Honor, is the whole of the entry for that day.

Does the figure "8" there refresh your recollection as to about how long Agent Pardi was there?

A I think we spent most of the working day on the 1965 and 1966 tax returns.

Q When was the first time that Agent Pardi said anything to you about the '67 and '68 returns?

A The first mention of '67 and '68 tax returns was not made until some time -- I think it was the early part of fall. It could have been in the month of September.

Q Again, I show you Defendant's Exhibit 3 in evidence and read to you the entry of the second meeting showing a visit with Mr. Vispi: "September 24 -- Mr. Vispi, two hours. Needs '67 and '68 return. Gave one more week."

Does that refresh your recollection as to the first time or the date of the event in the early fal. that you have described?

A I'm not certain that that was the very first time that Mr. Pardi talked to me about '67 and '68 tax returns. The first time that Mr. Pardi made any mention whatsoever of the 1967 and 1968 tax returns was sometime during the month of September. On that particular date, my recollection is that he came in and he spent some additional time on my 1965 and 1966 tax returns, because I had to provide him with additional information or with additional receipts, and --

Q If I may interrupt, I'm concerned here about the conversation with respect to the '67 and '68 returns, the time you met in the fall, using your best recollection, what did he say to you and what did you say to him with respect to those returns on the first time they were discussed between the two of you?

A Mr. Pardi asked me, "Mr. Vispi, have you filed your 1967

and 1968 returns?" At that time I said to him, "Mr. Pardi, no, I have not, but I am working on preparing those returns at this time."

Q And when you told him that, were you, in fact, working on them, and did you intend to file them?

A I was, in fact, and I had, in fact, been spending time in preparing or in accumulating the information for the purpose of preparing the '67 and '68 tax returns, which I intended to give to either Mr. Capollo so that he could prepare them or so that I would have them available so that I could prepare them.

Q Following this first discussion of your 1967 and '68 returns, was it discussed again with Mr. Pardi?

A Mr. Moot, to the best of my recollection, it was discussed on at least two other occasions and in two letters which were sent to me by Mr. Pardi on at least two subsequent conversations either over the phone or in my office he said to me, or in words to the effect, "I still do not have your '67 and '68 returns."

I told him, "I'm trying to get them. I'm trying to get the information available for you as quickly as possible," or, "I will give them to you as quickly as possible."

Q And what did he say in return to what you said?

A He said, "I can't wait much longer."

And as a matter of fact, my recollection is that I received a letter from him in the latter part of October, 1969, in which he said, "Unless you submit your '67 and '68 tax returns, I will have to turn over this matter to my superiors."

I believe subsequent thereto I spoke to him on the phone, and I said, "Mr. Pardi, as you know, I have been working and getting my papers together. I will turn them into you as quickly as possible within the next couple of weeks or so."

Again, because I was laden with business pressures, with problems, with personal problems, trying to take care of clients, a little bit of illness, I was unable to do so. As a matter of fact, I believe it was in the early part of December that I became ill. I had a very severe flu attack and wound up with a condition that was diagnosed by my internist as the shingles, and I was home for a period of about two or three weeks during the course of December, 1969.

Q And following this illness in December, '69, tell us whether or not you again turned your attention to the

'67 and '68 returns in January of 1970?

A Well, as I had indicated to Mr. Pardi, during this period of time in 1969 when I was being interviewed by him, that I was accumulating the data for the preparation of the tax returns for '67 and '68. I believe that on January 21, 1970, I did submit to Mr. Francis at the IRS office the 1967 and 1968 tax returns.

Q Thereafter, after you gave the '67 and '68 returns to the agent, or the Internal Revenue Service, did you discover errors and file amended returns for those years?

A Yes. As a matter of fact, the errors were brought to my attention by one of the agents, and at least, I believe, one of the errors, I volunteered to the agent, and late in the year -- I believe it was sometime in November of 1970 -- I filed amended returns for the two years in question.

MR. MOOT: You may ask.

CROSS EXAMINATION

BY MR. WELCH:

Q Mr. Vispi, to clarify the record, when Mr. Pardi told you near the end of October that he couldn't wait much longer for your '67 and '68 returns, did he tell you that in person or in a letter?

A Mr. Welch, he told me that both in a letter and either in a telephone conversation or during the course of one of the interviews in my office in connection with my '65 and '66 tax audit.

Q Did you bring that letter with you today?

A Mr. Welch, I believe the letter that I may have reference to, my recollection is that I was sent two letters, and the first one, I believe, has already been offered, or has been identified as an Exhibit, or has been offered in evidence.

Q Mr. Vispi, I'm going to hand you what has been received in evidence as D-5, which purports to be a letter of October 6, 1969. Now that is one letter.

Is there anywhere in that letter where it is indicated that if you do not submit your '67 and '68 returns, he would have to report it to his superiors?

A Not in this letter, but there was, either in a conversation or in another letter.

Q Do you have the other letter?

A I do not have the other letter.

Q At any time did he tell you that his "superiors" would mean criminal prosecution, or was it a question of his just finishing his audit because he couldn't wait any

longer for your materials?

A At no time did he indicate to me there would be criminal prosecution or criminal investigation.

Q Now you sat through yesterday's testimony here at your trial, and you heard testimony concerning advice of rights which were read to you by Agent Francis in January of 1970, and isn't it a fact that Agent Francis did read those rights to you as were read in the Exhibit in evidence in this trial?

A May I see the Exhibit, please?

MR. WELCH: Let the record show I am handing the witness G-7 in evidence.

(Government's Exhibit 7 handed to the witness.)

THE WITNESS: Mr. Welch, at this moment, I cannot testify as to whether or not that particular paragraph was read to me.

Q Was anything said to you concerning a right to an attorney?

A I can't recall, sir.

Q But you don't deny that that could have happened?

A I don't deny that it could have happened. I can't also deny that it might not have happened.

Q Were you aware that Agent Francis was a criminal investigator?

A I was not, sir.

Q Are you denying that he advised you that he was a criminal investigator at your office that morning?

A I'm simply stating, Mr. Welch, that I was not made aware of the fact that he was a criminal investigator.

THE COURT: Did you think he was a civil investigator? He had to be one or the other.

THE WITNESS: Your Honor, at this point, and at that point, I did not know and I did not know until perhaps either yesterday or today that there was a distinction between a civil and criminal investigator for the IRS.

THE COURT: On that day you didn't know whether he was investigating your criminal liability or your civil liability?

THE WITNESS: I did not know.

Q You didn't know this was different from the civil audit, that this was a criminal investigation?

A I did not, sir.

Q When is the first time you became aware of that, that you were under criminal investigation?

A Until very late in the year 1970.

Q Do you remember what incident that was, or what date?

A To the best of my recollection, prior to the interview, or conference, in the office of the IRS, at which Mr. Ludwig was present.

Q That was the conference in which Mr. Fine, your attorney, attended with you?

A That's correct.

THE COURT: You were then represented by a lawyer?

A At that time, sir, in late 1970, when the conference took place, Mr. Pardi, I believe, Mr. Pasquarella and Mr. Ludwig, and until that time, sir, I did not know that I was being investigated for possible criminal charges.

Q You testified in your direct testimony that September of 1969, and you could not recall the exact date, was the first time that Agent Pardi referred any questions to you concerning 1967 and 1968 tax returns. Is that a correct statement?

A I believe that I testified that it was in either late summer or early fall, and I thought that it was in

September, the first time that an inquiry was made by Mr. Pardi of my '67 and '68 tax returns.

Q But you did at one time tell him that your '67 and '68 tax returns were, in fact, filed when they were not, in fact, filed?

A Mr. Welch, never prior to that time.

Q Never prior to September, '69, or the fall?

A That's correct.

Q But at one point during that period in question you did tell Agent Pardi that you had filed them when you had not?

A Which period in question?

Q At any time did you tell Agent Pardi that you had filed '67 and '68 when, in fact, you had not?

A Never.

Q So you never mislead Agent Pardi into thinking they were already filed?

A I never stated, nor did I ever state to Mr. Pardi, or anyone, that I had filed the '67 and '68 tax returns.

Q Now, Mr. Vispi, it is a fact that you did not file your '67 and '68 tax returns on or before April 15, 1968, or on or before April 15, 1969, is that a fact?

A Well, the record reveals that, sir.

Q You are not denying that, are you?

A You have copies of my tax returns, which were stamped January 21, 1970.

Q Answer the question. They were not filed on April 15th, is that correct, of those respective years?

A The tax returns?

Q Yes, sir.

A They were not filed, that's correct.

Q And you did not have an extension of time within which to file those tax returns for '67 and '68?

A I had made a request for an extension --

Q Answer my question. Did you have an extension?

A Did I receive one from the IRS?

Q Yes, sir.

A No, I did not.

Q Did you file your tax returns with New York State for 1967 and 1968?

A No, I did not.

Q Did you file them for 1965 and 1966?

A To the best of my recollection, they were filed.

Q When were they filed?

A Late.

Q When were they filed?

A I don't recall, sir.

Q Were they filed in a matter of years or a matter of months after the due date?

A I don't recall, sir.

Q Were they filed before or after you were charged in this Information for which you are on trial now?

A Before.

Q Were they filed before or after the criminal investigator, or before you indicated you first found out this was a criminal investigation?

A Would you repeat the question?

Q Did you file your New York State tax returns for '65 and '66, which you indicated were filed late, did you file them before or after the November, 1970, meeting where you first learned that this was a criminal investigation?

A To the best of my recollection, Mr. Welch, those returns were filed well in advance of my first contact with Mr. Pardi in 1969.

Q But filed late?

A (No response.)

Q That part is correct?

A I believe they were filed late.

Q For the record, I would like to clarify another point,

several other points. Late in December, 1967, you indicated you made a move of office space, and I'm concerned about the dates. That is what I would like to zero in on.

A To the best of my recollection, the transfer from the Statler to the Western Savings Bank Building took place the latter part of December, 1967.

Q Then when was the next move of your office space?

A I think it took place in mid-summer, 1969.

Q Was there any move of office space during 1968?

A My move was completed sometime in the early part of January, 1968.

Q That is the move from the Statler to the Western Savings Bank, the first move?

A Correct.

Q Then the next time you moved was approximately mid-summer, 1968?

A 1969.

Q I'm sorry. I was not deliberately trying to mislead you. I'm trying to get the dates straight.

Mid-summer of 1969 was the next move?

A Yes, sir.

Q As I understand your testimony, the move at the end of December, '67, which ran into early January, '68, resulted

in your having difficulty in locating certain records, is that correct?

A Records for what period, Mr. Welch?

Q Well, that is my next question -- records for what period?

A Would you repeat the second last question?

(The following question read:

"As I understand your testimony, the move at the end of December, '67, which ran into early January, '68, resulted in you having difficulty locating certain records, is that correct?")

Q What records were you having difficulty locating?

A I had difficulty locating records pertaining to office files as well as to personal matters, such as my income tax papers, my receipts, et cetera.

Q Income tax papers concerning what tax years?

A My income tax papers would mean my records for the period 1967.

Q Those were missing or were difficult to locate as a result of this move, is that what you are saying?

A Yes. Some of the records were lost or destroyed, I believe, as a result of the turmoil in the remodeling of Garvey's office in the latter months of 1967.

Q How long had you been in Garvey's office?

A Five years.

Q Where were the records for 1965 and 1966?

A Some of the records may have been in the office, and some might have been at my home.

Q Some of those records for 1965 and 1966 were in your office and Mr. Garvey's office, is that what you said?

A Some might have been.

Q And were they equally unavailable after the move?

A No, they were not, Mr. Welch, because that was one of the matters pending with Mr. Pardi, that he needed additional information from me in connection with the audit of the 1965 and 1966 tax returns.

Q What period of time are you talking about?

A (No response.)

Q My question was directed to the end of December, 1967, the beginning of January, 1968, and isn't it a fact you didn't meet with Mr. Pardi until April of 1969?

A That is correct. I met with him in 1969.

Q Isn't it a fact that the records for 1965 and 1966 would be equally unavailable, just as unavailable as any record for '67, as a result of that move?

A Yes. As a matter of fact, I didn't have all my records

for Mr. Pardi to substantiate some of the deductions that were taken on '65 and '66 because they couldn't be found.

Q You couldn't even find them from December of '67 right up until '69 when you met with Mr. Pardi?

A I had no occasion to look for them until Mr. Pardi came to see me about them.

Q Who prepared your '65 and '66 returns?

A I believe I did.

Q And you prepared them April 17th, '68, isn't that a fact?

A I believe so.

Q The period you just testified your records weren't available?

A The only thing I can say --

Q Would you answer my question?

A Pardon?

Q What is the answer to that question?

A I think your question was during the period that my records were not available?

Q That is my question.

A The only answer I can give to that, sir, is that I didn't probably have all the records. I may have had some of the records.

MR. WELCH: I have no further

questions. Thank you, Your Honor.

(Witness excused.)

P H I L I P H. M A G N E R, J R.,

called as a witness by the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOOT:

Q Mr. Magner, you are an attorney practicing in Buffalo?

A Yes, sir.

Q And during the years prior to 1967, was Mr. Vispi, the defendant in this case, associated with your firm in the Hotel Statler?

A Yes, he was.

Q Did you have an opportunity during that period to observe his work and his work hours and work habits?

A Yes, a very close opportunity.

Q Was his office within the suite of offices of your firm?

A Yes. Beginning in 1962, when we moved from our former address in the Genesee Building to the Statler Hotel, Jim Garvey and I formed a nominal partnership with Mr. Vispi under which arrangements Mr. Vispi actually rented space from us, but we maintained the firm name in common, so I saw him on a daily and often even on a nightly basis,

because he did work a great deal in the evenings in those days.

Q What was the status of his work with respect to timeliness and other things that you could observe?

A Well, I should preface my answer to that question by saying Mr. Garvey and I had known Mr. Vispi for a long time as a classmate, and when we had decided to form this nominal partnership, we had been very hopeful that the arrangement would work out well. But as things worked out, we became increasingly dissatisfied with his work habits.

(Pause in the proceedings.)

Q The question was, to your knowledge, were you able to determine whether Mr. Vispi, particularly in the year '67, before the arrangement was terminated, was he able to keep up with the work?

A No, evidently he was not. The complaints about his work within our office, about work that we referred to him, were just multiplying at that particular stage.

Q Was he in the office? What hours was he in the office?

A He was in the office a great deal, or at least he was working a great deal, because he did a lot of his work at Erie County Hall. And I am engaged principally in

trial practice, and I work often in the evenings, and it was quite common to see him coming from the County Clerk's Office at Erie County Hall, and I am engaged principally in trial practice, and I work often in the evenings, and it was quite common to see him coming in from the County Clerk's Office at ten, ten thirty at night where he would do his title examinations very often in the evening. I saw him many evening hours.

Q Were you aware in addition to the work he was doing for clients whether he was engaged in certain things in the community, different clubs or political activities?

A Oh, yes. During some of those years he served as a Director for the Erie County Bar Association, three years, as I recall. He has always been very active in the Lawyers Club of Buffalo, and active in politics to some extent, and active in the church. He was active in the Federation of Italian American Societies -- to name one that I know took some time.

Q Now directing your attention particularly to the latter part of 1967, did you reach a decision with your partner, Mr. Garvey, as to whether the arrangement with Mr. Vispi could be continued?

A Yes. We did reach such a decision. Mr. Garvey and Mr.

Sullivan and I were considering the formation of a partnership with another firm, an amalgamation of two firms, as a matter of fact, and we decided to make that consolidation of the two firms. Of course, the question was raised as to whether Mr. Vispi should continue any sort of association with the new firm, and because we had been getting so many complaints from our clients, pricipally the Maccabees Insurance Company, about delay in Mr. Vispi's work and the missing of deadlines of one sort or another, about the furnishing of fire policies and the closing of real estate deals which was his particular responsibility on work we gave him, and we came, I might say very regretfully, to the conclusion that he should not be part of the new firm that was to be formed.

Q Let me ask you this. You said that the complaints of clients was as to delay. Was there any complaints, to your knowledge, about the quality of work Mr. Vispi did when he got around to doing it?

A The quality was never the subject of complaint. It was that he would promise to get something done by a certain period of time, and as we know, legal matters have to be attended to in a timely fashion, and he would, with disturbing frequency, miss the time limit.

Q Was there any complaints with respect to the integrity with which the work was done?

A Never.

Q Did the clients give any complaints about that?

A Never, to my knowledge.

Q The complaint was then directed solely to not being able to make the deadline?

A Not getting it done when it should have been done. I should tell you that he had some bad work habits. He would write title reports out in longhand. We were continually at him to dictate those things, but we were never able to change him, and his disposition is such, and he is a dear friend, and it is hard to be hard on him, so those habits continued.

Q What time of the year did you make a decision to amalgamate your firm with the other firm, bringing in new partners?

A It would have been sometime in the late winter of '67, and our target date for the formation of the new firm, which was to come into our suite, where Mr. Vispi had an office, was to be August 1st of '67, as I remember it. But when we told Joe that he was going to have to move, he didn't get moved on time. Construction was delayed,

and when the new firm was officially formed and the new partners moved in on January 1st of 1968, we just managed to get Joe out the door a few days before that.

Q What was the condition of the space where Mr. Vispi carried on his work in your office in December?

A It was a mess, because construction was being done in the office to accommodate the new partners who were moving in, and in order to do that properly, since somebody else was going to take his office, he should have been out. And we literally had to push him out the door, which made us feel bad and I'm sure it probably made him feel very bad, too.

Q At any time, Mr. Magner, were you interviewed by either Agent Pardi or Agent Pasquarella?

A I have no recollection of any such interview.

Q In addition to his work for your firm, was Mr. Vispi also engaged as confidential clerk for different judges of the Supreme Court of the State of New York?

A I believe so.

Q And were you familiar with the other members and officers of the Bar Association?

A Yes. I have been pretty active in the Bar Association over a good many years.

Q Were you President of the Bar Association on one occasion?

A Yes.

Q And prior to that time was Mr. Vispi a Director of the Bar Association?

A Mr. Vispi was a Director for three years before I was President, and since I used to follow those things very closely, I know he was elected with one of the highest votes, as I then recall it, in the history of the Association.

Q And in addition to the other matters, did he devote part of his time to the affairs of the Bar Association?

A Yes. There was no assignment that I ever knew him to turn down, and because he was so highly thought of as an individual, he was continually importuned by various candidates for Bar Association office to help them in their election campaigns, and I know that he did that for many, many people, myself included.

Q Mr. Magner, can you tell Judge Burke whether you have had an opportunity to hear from the speech of fellow lawyers and people in the community, the discussion of Mr. Vispi's reputation for honesty?

A I don't think there is any lawyer in the County of Erie who has a better reputation for honesty than Joe Vispi.

Q Have you had a chance to hear among the speech of fellow lawyers, clients and citizens of the community, the reputation of Mr. Vispi for being a law-abiding citizen?

A Yes. Of course, he is regarded as a law-abiding citizen.

Q Have you had an opportunity to hear the speech of fellow lawyers and clients, and persons in the community, the reputation for Mr. Vispi with respect to truthfulness?

A He has the highest reputation for truthfulness, with the sole exception, Mr. Moot, that in the course of his work he would often promise things would be done and not get them done.

MR. MOOT: Thank you.

You may ask.

MR. WELCH: Thank you, Your Honor.

I have no questions of this witness.

(Witness excused.)

W I L L I A M R. B R E N N A N,

called as a witness by the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOOT:

Q Mr. Brennan, you are a lawyer?

A Yes, I am.

Q Are you a member of the Erie County Bar Association?

A I am.

Q Have you known Mr. Vispi when he served as a Director of the Association?

A I did.

Q How long have you known Mr. Vispi?

A Twenty-five years, at least.

Q Have you had occasion to share certain business with him?

A I have.

Q On some occasions he did work for your clients, and on some occasions you did work for his?

A That is so.

Q Have you had an opportunity, Mr. Brennan, to hear in the discussion of fellow lawyers and citizens of your community the reputation for Mr. Vispi with respect to truthfulness?

A I have.

Q And what is that reputation?

A The very best.

Q And have you had an opportunity, Mr. Brennan, to hear in the speech of people in the community Mr. Vispi's reputation for being a law-abiding citizen?

A I have.

Q And what is that reputation?

A Tops.

Q Can you tell me some of the activities which you are aware of that Mr. Vispi participated in, in the community, in addition to the practice of law?

A Well, in addition to what you mentioned, Mr. Moot, of his Bar Association activities, Joe is generally known as a great benefactor for his fellow man. He is in the forefront of a lot of civic and social organizations, and was very active in the Italian community in civic endeavors. I know for a fact he is an able servant of Supreme Court Justices, in positions of trust and integrity. I have never heard a bad word about him. He has a heart as big as all outdoors, and I am very fond of the man, and I will admit it very honestly and openly.

Q Mr. Brennan, how can you explain, if you can, the fact of Mr. Vispi's 1967 and 1968 returns not being filed on time?

MR. WELCH: Objection, Your Honor.

THE COURT: Objection is overruled.

THE WITNESS: I think the thrust of the question is to what his work habits are in my association with him?

Defendant Rests.

Q Yes.

A Mr. Vispi has been an intensely busy and overworked lawyer and human being. He does a lot of my title work and has done it over the years. He was overburdened, and I couldn't get deals closed. I would call him up and every day would be a crisis. And I would say, "I have got to have this on a real estate closing."

And it came to the point where I had to take work away from him temporarily. I always came back to him, and that has been the pace between Mr. Vispi and myself for as long as I have known him.

Q Was there any difficulty whatsoever with respect to the quality of the work when he finally got it done?

A He is a specialist, a technician on a real estate deal.

Q Were there any complaints whatsoever, as far as you were concerned, with the work he did for you and your clients with respect to the integrity which it was done?

A No, none whatsoever.

MR. MOOT: That is all. You may ask.

MR. WELCH: I have no questions.

(Witness excused.)

MR. MOOT: The defendant rests,

Renewal of Motions.
Motions Denied.

Your Honor. And I renew the motions previously made with respect to acquittal.

MR. WELCH: If Your Honor please, I have no rebuttal, and I do oppose the defendant's motion for directed judgment of acquittal.

THE COURT: The motions are all denied.

How do you want to submit this?

MR. MOOT: Your Honor, we are prepared to submit it on the record as it stands. We will follow Your Honor's wishes in view of the fact that it is a non-jury case.

THE COURT: In my opinion oral argument very seldom does anything. Anything important that you have, put it in writing, and I assure you I shall read all the briefs.

MR. MOOT: Does Your Honor wish to fix the date for the post-trial brief?

THE COURT: Take as long as you want to, within reason, because I have a

full schedule for at least two months.

MR. MOOT: Thank you, Your Honor.

THE COURT: I think I will fix a deadline. Simultaneous submission, two months.

MR. MOOT: I want to inquire, Your Honor, whether the Government is going to order a transcript.

MR. WELCH: I would like very much, Your Honor, to submit within two months and will attempt to do without the transcript, because I know the Court Reporter's situation.

I will submit our proposed findings within Your Honor's two-month deadline.

At this time I do not intend to order the transcript, but if upon the preparation of those papers it becomes clear that there is a question that the transcript will solve, I will attempt to get that limited part of the record transcribed.

THE COURT: That makes it necessary to make this disposition, then. If you

order the transcript, the case is submitted two months after the transcript is received. Is that clear?

MR. WELCH: Yes, Your Honor.

MR. MOOT: Will the Government advise defense counsel if they order the transcript, so we will know what time schedule we are working under?

THE COURT: What?

MR. MOOT: I want to know if I can be advised if the transcript is ordered, because I will want to know whether I have two months from today or two months from a different date.

THE COURT: Ask the Reporter to let you know.

MR. MOOT: Can we have ten days following the simultaneous submission of post-trial briefs for a reply?

THE COURT: For a reply, all right. That will be two months plus ten days. In case the transcript is ordered, that will extend it a little further.

Trial Concluded. 305-A
Court Reporter's Certification.

MR. WELCH: Thank you, Your Honor.

(Whereupon, at 4:45 p.m., Friday, October 24, 1975, the trial in the above-entitled cause was concluded.)

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REPORTER'S CERTIFICATE

I, A Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within-entitled and numbered cause on the dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

A. Jake Jacobson

Dated: December 5, 1975

GOVERNMENT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	CR. NO. 74-44
Plaintiff	:	
- vs -	:	GOVERNMENT'S PROPOSED
JOSEPH C. VISPI,	:	FINDINGS
Defendant	:	

The Government respectfully submits the following proposed findings and respectfully submits they are supported by proof beyond a reasonable doubt:

1. That the defendant herein, Joseph C. Vispi, was required to file with the Internal Revenue Service income tax returns for the year 1967 between the close of 1967 and April 15, 1968 and for the year 1968 between the close of 1968 and April 15, 1969.

2. That the defendant herein, Joseph C. Vispi, knew he was required to file said income tax returns.

3. That the defendant, Joseph C. Vispi, knowingly failed to file these required income tax returns for 1967 and 1968 within the time period required by law as charged in the Information herein.

4. That the defendant herein, Joseph C. Vispi, wilfully failed to file said required, timely income tax returns for 1967 and 1968 as that term "wilfully" is currently interpreted.

5. That the evidence herein proves beyond a reasonable

doubt that the defendant, Joseph C. Vispi, is guilty of the offenses charged in the Information herein.

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
233 U.S. Courthouse
Rochester, New York 14614

Eugene Welch

By: EUGENE WELCH
Asst. United States Attorney

DEFENDANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW – filed 3-12-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-against- Criminal No. 74-44

JOSEPH C. VISPI,

Defendant

DEFENDANT'S PROPOSED FINDINGS

PURSUANT TO FED. RULES CR. PROC. 23(c), 18 U.S.C.A.

1. Defendant, Joseph C. Vispi, was required to file income tax returns with the Internal Revenue Service for the years 1967 and 1968.

2. Defendant, Joseph C. Vispi, knew he was required to file said income tax returns.

3. Defendant, Joseph C. Vispi, timely filed a request for an extension of time to file the 1967 income tax return and believed he had done so for the year 1968. (Ex. G-9, D-12)

4. In April, 1969, the Internal Revenue Service commenced an audit of the defendant's 1965-1966 income tax returns.

5. During the course of the audit, and more specifically on September 24 and October 17, 1969, the defendant, Joseph C.

Vispi, verbally requested and was granted, on at least one occasion, additional time to file his 1967-1968 income tax returns. (Ex. D-3; Tr. pp. 81,82)

6. On October 23, 1969, the agent concluded his audit and referred all matters concerning the 1967 and 1968 income tax returns to his superiors. (Exhibits D-3, D-13; Tr. p. 279)

7. In Janauary 1970, less than three months later, defendant, Joseph C. Vispi, filed his 1967 and 1968 income tax returns.

8. Defendant, Joseph C. Vispi, presented evidence of his laxity, carelessness and negligence in the administration of his affairs and the affairs of his clients.

9. Defendant also presented evidence of various instances where he was unable to complete work for his clients on time and, on several occasions, he was required to make good for the delay with funds of his own. (Ex. G-7; Tr. pp. 233,234)

10. In December, 1967, the defendant's longtime law partnership was dissolved due to his work habits. Shortly thereafter, in the Spring or early Summer of 1968, the defendant was again required to relocate his law practice. (Tr. pp. 199, 263) Many of the defendant's records were lost or misplaced after both of these moves.

11. Defendant, Joseph C. Vispi's reputation for honesty and truthfulness in the community is excellent.

12. The government must prove beyond a reasonable doubt, that the defendant, Joseph C. Vispi, willfully failed to file his income tax returns for the years 1967 and 1968.

13. "Willfully" means intentionally, deliberately and with a bad purpose or evil motive.

14. The government failed to prove, beyond a reasonable doubt, the essential elements of the offenses charged.

15. Defendant, Joseph C. Vispi, is not guilty of the offenses charged in the Information herein.

Dated: March 12, 1976

Respectfully submitted,

OHLIN, DAMON, MOREY, SAWYER & MOOT
Counsel for Defendant,
Joseph C. Vispi
1800 Liberty Bank Building
Buffalo, New York 14202
Telephone No. (716) 856-5500

Richard E. Moot,
Terrence M. Connors,
of Counsel

DECISION OF HONORABLE HAROLD P. BURKE CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW – filed 4-21-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES

- vs - CR: 74-44

JOSEPH C. VISPI

Eugene Welch
Assistant United States Attorney
for the government

Richard E. Moot
1800 Liberty Bank Building
Buffalo, N.Y. 14202
Attorney for defendant

Trial before the undersigned without a jury October 23, 1975.

FINDINGS OF FACT

1. The defendant in open court on October 23, 1975 filed a written waiver of trial by jury and consent to be tried by the court without a jury. The United States Attorney on October 23, 1975 in open court filed a consent to waiver of jury trial and to a trial by the court without a jury. The court on that date approved the waiver and consent.

2. The defendant was charged in an information containing two counts of failure to file income tax returns for the years 1967 and 1968.

DECISION OF HONORABLE HAROLD P. BURKE CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW — filed 4-21-76.

3. The defendant was required to file with the Internal Revenue Service income tax returns for the year 1967 between the close of 1967 and April 15, 1968, and for the year 1968, between the close of 1968 and April 15, 1969.

4. The defendant knew that he was required to file said income tax returns.

5. The defendant with guilty knowledge failed to file the required income tax returns for 1967 and 1968 within the period required by law as charged in the information.

6. The evidence establishes beyond a reasonable doubt that the defendant is guilty of the offenses charged in the information.

CONCLUSION OF LAW

1. I find the defendant guilty as charged in the information.

I hereby fix the time and place of sentence as follows: 10:00 A.M. on May 10, 1976 at the United States Court House, Rochester, New York.

HAROLD P. BURKE
United States District Judge

April 20, 1976.

DEFENDANT'S MOTION TO VACATE JUDGMENT, DISMISS THE INFORMATION AND FOR A NEW TRIAL – filed 4-21-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

JOSEPH C. VISPI,

Defendant

NOTICE OF MOTION AND MOTION TO VACATE THE JUDGMENT AND TO DISMISS THE INFORMATION AND IN THE ALTERNATIVE FOR A NEW TRIAL

Cr. No. 74-44

SIRS:

PLEASE TAKE NOTICE, that upon the Information and all other proceedings had herein, the undersigned will move this Court on behalf of the defendant, JOSEPH C. VISPI, at a Term of this Court to be held in the United States Courthouse in the City of Rochester, State of New York on the 26th day of April, 1976, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order:

I. Vacating the judgment and dismissing the Information herein upon the grounds that the Court erred in denying defendant's pretrial and trial motions to dismiss the Information for the following reasons:

(1) The defendant has been denied his right to a speedy trial in violation of the Sixth Amendment to Constitution of the United States.

(2) There has been unnecessary delay in bringing the defendant to trial in violation of Rule 48(b), Federal Rules of

DEFENDANT'S MOTION TO VACATE JUDGMENT, DISMISS THE INFORMATION AND FOR A NEW TRIAL — filed 4-21-76.

Criminal Procedure.

(3) The government was not ready for trial within six months from the date of the filing of the Information in violation of the "Plan for Achieving Prompt Disposition of Criminal Cases" promulgated by United States District Court for Western District of New York pursuant to the requirement of Rule [illegible](b), Federal Rules of Criminal Procedure.

(4) The delay between the alleged commission of the criminal act and the filing of the Information has denied the defendant due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

(5) Defendant was charged with failure to file income tax returns for the years 1967 and 1968. Undisputed evidence at the trial proved the returns were in fact filed and that the act charged was not proven.

II. In the alternative granting defendant a new trial for the following reasons:

(1) The court erred in [illegible]ving defendant's motion for acquittal made at the conclusion of the evidence.

(2) The judgment is contrary to the weight of the evidence.

(3) The judgment is not supported by substantial evidence.

Dated: Buffalo, New York
April 21, 1976

Yours, etc.

Richard E. Moot

Richard E. Moot, a partner
OHLIN, DAMON, MOREY, SAWYER & MOOT
Attorneys for Defendant
Joseph C. Vispi
1800 Liberty Bank Building
Buffalo, New York [illegible]

DEFENDANT'S MOTION TO VACATE JUDGMENT, DISMISS THE INFORMATION AND FOR A NEW TRIAL — filed 4-21-76.

TO: EUGENE WELCH, ESQ.
Assistant United States Attorney
United States Courthouse
Rochester, New York 14614

HON. HAROLD P. BURKE
United States District Judge
United States Courthouse
Rochester, New York 14614

CLERK
United States District Court
United State Courthouse
Buffalo, New York 14202

CERTIFICATION OF MAILING AND FILING

I ceretify that the above notice of motion and motion was mailed to parties at their addresses shown above and filed with the Clerk of the Court on April 21, 1976.

Richard E. Moot

DEFENDANT'S NOTICE OF APPEAL – filed 5-13-76.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

JOSEPH C. VISPI,

Defendant

Docket Number CR 74-44

MAY 13 – 45 P.M. '76
CLERK
U.S. DISTRICT COURT
W.D. OF N.Y.

HON. HAROLD P. BURKE
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that defendant, JOSEPH C. VISPI appeals to the United States Court of Appeals for the Second Circuit from the ~~Judgment~~ ~~Order~~ other (See below)

~~(specify)~~ ~~entered in this action~~.

DECISION - Defendant guilty - Judge Burke - Filed 4/21/76 (Date)
Motion to Vacate Conviction and for New Trial, Filed 4/21/76
DECISION - ~~Pending~~ May 3, 1976 denied
Sentence - 5/10/76

(Counsel for Appellant)

Address Richard E. Moot
OHLIN, DAMON, MOREY, SAWYER & MOOT
1800 Liberty Bank Building
Buffalo, New York 14202

Date 5/13/76

To: JOHN K. ADAMS
Clerk of Court
U.S. District Court
Western District of New York

Phone Number 716 856-5500

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE	▶ TRANSCRIPT ORDER ▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).
___ I am ordering a transcript _X_ I am not ordering a transcript of Trial Reason: ___ Daily copy is available ___ U.S. Attorney has placed order ___ Other. Attach explanation ORIGINAL AVAILABLE (WDNY)	Prepare transcript of ___ Pre-trial proceedings ___ Trial _X_ Sentence - 5/10/76 _X_ Post-trial proceedings - 4/26/76

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment _X_ Funds ___ CJA Form 21

ATTORNEY'S signature Richard E Moot DATE May 13, 1976

▶ COURT REPORTER ACKNOWLEDGEMENT To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.
May 17, 1976	May 27, 1976	15 Pages

Date May 17, 1976 Signature G. Jack Jacobs
(Court Reporter)

ORIGINAL

27

DECISION OF HONORABLE HAROLD P. BURKE DENYING POST-TRIAL MOTIONS – filed 5-19-76.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES

- vs - CR: 74-44

JOSEPH C. VISPI

Richard E. Moot
1800 Liberty Bank Building
Buffalo, N.Y. 14202
Attorney for defendant

Eugene Welch
Assistant United States Attorney
for the government

This case was tried before the undersigned without a jury on October 23, 1975. The court made findings of fact and conclusions of law dated April 20, 1976 and fixed the time and place of sentence at 10:00 A.M. on May 10, 1976 at the United States Court House, Rochester, New York. On April 21, 1976 the defendant filed a motion returnable April 26, 1976 to vacate the judgment (there has been no judgment), to dismiss the information upon grounds specifically set forth in the motion, and for alternative relief of a new trial on grounds specifically set forth in the motion. On due consideration it is hereby

DECISION OF HONORABLE HAROLD P. BURKE DENYING POST-TRIAL MOTIONS — filed 5-19-76.

ORDERED that the motion is in all respects denied.

HAROLD P. BURKE
United States District Judge

May 3, 1976.

JUDGMENT OF CONVICTION – filed 5-19-76.

United States of America vs.

United States District Court for

DEFENDANT: JOSEPH C. VISPI

WESTERN DISTRICT OF NEW YORK

FILED

1976 MAY 19 8 20 AM

W.D. OF N.Y.

DOCKET NO. Cr-1974-44

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: May, DAY: 10, YEAR: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Richard Moot (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of Failing to file income tax returns, in violation of Section 7203 Title 26, U.S.C.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is

sentenced on Counts 1 and 2 as follows: The Court: I impose a fine of $500 on each count; the defendant requests stay of the fine pending the filing of a notice of appeal. Granted.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

HAROLD P. BURKE, U. S. District Judge

Date May 10, 1976

EXHIBIT G-7 – Memorandum of Special Agent Francis, dated 1-20-70.

MEMORANDUM OF ORIGINAL INTERVIEW

In re: Joseph C. Vispi
#16-02-080-1-1

Date: January 12, 1970

Time: 10:10 a.m. to 11:10 a.m.

Place: Office of Intelligence Division

Present: Joseph C. Vispi, Taxpayer
Dominick Pardi, Revenue Agent
Allen A. Francis, Special Agent

Revenue Agent Pardi and myself called at the Office of Mr. Vispi in the Statler Hilton Hotel at 9:00 a.m. on January 12, 1970. I introduced myself as a Special Agent, Intelligence Division, and stated one of my functions was to investigate possible criminal violations of the Internal Revenue Laws. I advised Vispi that I would like to talk to him relative to his failure to file tax returns for the years 1967 and 1968. He stated that he had an appointment, but would meet us later at my office. He appeared at 10:10 a.m.

Vispi was advised of his Constitutional Rights by my reading to him from my credentials the following:-

"In connection with my investigation of your tax liability, I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers of information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

Vispi agreed to answer the questions relative to the business and personal affairs of himself and his wife. His answers were as recorded on the following pages:-

Personal History:
Vispi stated that he was 49 years of age; married Theresa M. Grillo in 1946; had two dependent children in 1967 (Joseph Jr. and Celeste) and only one in 1968, Celeste. He stated that he lived with his family at 16 Berryman Drive, Snyder, New York, during the years involved.

EXHIBIT G-7 — Memorandum of Special Agent Francis, dated 1-20-70.

Bank Accounts:
The taxpayer stated that he maintained the following bank accounts:-
Self - Buffalo Savings Bank
Joint - Erie County Savings Bank
Self - Marine checking accounts (1) Self. (2) Escrow.
Self - Bank of Buffalo (Savings relative to rental property)
Also has Marine Midland Charge Card.

Real Estate:
Vispi stated he purchased his residence in 1952 and made no improvements to it in 1967 - 1968. He stated that he had rental property purchased in 1966 from Michael Catalano - two flats rented at $75.00 per month, 958 Lafayette Avenue, Buffalo, N.Y.; he stated the two tenants, Davenport and Aldridge, are still living in the apartments.

Mortgages Owed:
Vispi stated the Buffalo Savings Bank held a mortgage on his residence and that a Maurice Mesch, 625 Delaware Avenue, Buffalo, N.Y., held a second mortgage on the property. He further stated that the Bank of Buffalo held a mortgage on his rental property.

Mortgage Held:
The taxpayer stated he was assigned a mortgage from his father's estate about 10 years ago; it involved the Casa Blanca Restaurant, Niagara & Mohawk Streets. The mortgage involved $2,500.00 and according to Vispi was assigned to him as re-payment for funds that he had advanced to his father.

Funds Borrowed:
Vispi stated that he borrowed money from the Marine Trust Co. and on his life insurance at Guardian Life Insurance. He stated he borrowed no funds from individuals.

Stocks and Bonds:
The taxpayer stated that he bought 50 shares of Canadian mining stock in the '50s; receives dividend of about $4.00 a year. He stated he purchased no U.S. Bonds.

Life Insurance:
Vispi stated he had the following insurance:
Guardian Life - self.
Prudential Insurance Co. - self.
Metropolitan Life Ins.Co. - self.
Guardian Life - Wife
Business insurance at Sellers and Company - also malpractice insurance.

EXHIBIT G-7 — Memorandum of Special Agent Francis, dated 1-20-70.

Cash on Hand:
The taxpayer was asked if he could tell us how much cash he had on hand on 12/31/66. It was explained to him that by cash on hand, I meant cash on his person, in his home, or safe-deposit box, and not funds on deposit in banks. Vispi stated that he would have no more than $100.00 cash on hand on December 31, 1966, 1967 or 1968. He stated that it was not his habit to have a lot of cash on hand.

Inheritance - Gifts:
Vispi stated that neither he, nor his wife, received an inheritence or large gifts.

Cost of Living:
Vispi could not give a figure relative to his annual cost of living. However, he stated that he gave his wife $75.00 a week for food, etc. and that he paid $160.00 per month on his mortgage. He also stated that he paid bills by check, rather than by cash.

Automobiles:
Vispi stated that at December 31, 1966 he owned two cars:
(1) 1963 Oldsmobile purchased at Minor-Scott.
(2) 1962 Corvair purchased at Phil Amigone for $1200.00
He stated that he gave the Corvair to a nephew and did buy a 1968 Olds (Cutlass) from Minor-Scott.

Reason for Non-Filing:
Vispi stated that he had no valid reason for non-filing timely returns; he implied that there was illness in the family and that he had borrowed funds to save face in his practice. He was not specific as to this problem. However, he did admit most people do have problems and that he should have filed.

Records:
The taxpayer stated that he has records for 1968, but that his 1967 records were lost when he moved. However, he stated he had files on his clients for the year 1967 - 1968 and would submit them to us. He stated that he grossed about $18,000.00 to $20,000.00 per year on his private practice.

Dominick Pardi
Revenue Agent
1-12-70

Allen A. Francis
Special Agent
1-12-70

EXHIBIT G-9 — Copies of Requests for Extensions for 1966 and 1967, dated 11-30-70.

MEMO LETTER

JOSEPH C. VISPI
Attorney at Law
1610 STATLER HILTON HOTEL - BUFFALO, N. Y. 14205
Phone 853-6642

MESSAGE REPLY

TO Mr. Richard A. Paganelli
Internal Revenue Service
P.O. Box 765 Niagara Square Station
Buffalo, New York 14201

DATE 11/30/70

Dear Mr. Paganelli

I enclose herewith copy of applications for extension of time to file for years 1967 and 1968

G-9 Ltr.

SIGNED Joseph C. Vispi

DATE

SIGNED

FORM AVAILABLE FROM GRAYARC CO., INC.
822 TH RD AVE B'KLYN., N.Y. 11232

THIS COPY FOR PERSON ADDRESSED

BEST COPY AVAILABLE

EXHIBIT G-9 — Copies of Requests for Extensions for 1966 and 1967, dated 11-30-70.

FORM 2688 (Rev. Nov. 1966)

U.S. Treasury Department—Internal Revenue Service

APPLICATION FOR EXTENSION OF TIME TO FILE
U.S. Individual Income Tax Return

Must be filed in DUPLICATE with your District Director on or before the due date for filing the return.

PLEASE PRINT OR TYPE

Name: Joseph & Teresa Vispi

Your Social Security Number: 052 : 12 : 4162

Number and street or rural route: 16 Berryman Drive

City, town, State, and ZIP code: Cnyder, New York 14226

(See reverse for filing instructions and return address)

1. An extension of time until June 15, 1967 is hereby requested in which to file the individual income tax return (Form 1040) of the taxpayer named above for the calendar year 19 66 or other taxable year beginning ..... and ending .....

2. State *in detail* the reason the extension is needed (see instruction 3 on reverse side): Illness of Taypayer

3. Did you file an individual income tax return on time (including any authorized extension) for each of the 3 years immediately preceding the year for which this extension is requested? ☐ Yes ☐ No

If "NO," list each year during the 3-year period for which a return was not filed on time or within a period covered by an extension, and state the reason.

4. Were you required to file a declaration of estimated tax for the year for which this extension is requested? ☐ Yes ☐ No. If "YES," was each required installment payment made on or before its due date? ☐ Yes ☐ No

SIGNATURE AND VERIFICATION:

IF PREPARED BY TAXPAYER

Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein are true and correct.

Signature of taxpayer Joseph C. Vispi Teresa M. Vispi Date April 14, 1967

☐ PREPARED BY SOMEONE OTHER THAN TAXPAYER

Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein are true and correct, that I am authorized by the taxpayer to prepare this application, and that I am:

☐ A member in good standing of the bar of the highest court of (specify jurisdiction) .....

☐ A certified public accountant duly qualified to practice in (specify jurisdiction) .....

☐ A person enrolled to practice before the Internal Revenue Service.

☐ A duly authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)

☐ A person standing in close personal or business relationship to the taxpayer who is unable to sign this application because of illness, absence, or other good cause. My relationship to the taxpayer and the reasons why the taxpayer is unable to sign this application are .....

Signature of person other than taxpayer ..... Date April 14, 1967

THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THIS APPLICATION TO YOU.

NOTICE TO APPLICANT— TO BE COMPLETED BY THE DISTRICT DIRECTOR

☐ Your application is approved. This form must be attached to your individual income tax return when filed as evidence that the extension was granted. **INTEREST ACCRUES AT THE RATE OF 6 PERCENT PER YEAR ON ANY TAX DUE FOR THE YEAR FROM THE REGULAR DUE DATE OF THE RETURN UNTIL PAID.**

☐ Your application cannot be considered since it was received in this office after the due date of the return. Your return should be filed without delay and the attached form with the return to explain the delay in filing.

☐ Consideration of your application has been given and other data given in your application but it has been determined that the extension is granted only to the regular due date or within 10 days of the date of signature of this notice. If the end of the extension period is after the regular due date. The 10-day period granted shall constitute a valid extension of time for filing returns for purposes of section 6651(a) of the Internal Revenue Code with respect to timely filed returns. Please attach this form to the return to explain the delay in filing.

☐ Other .....

.....
District Director

EXHIBIT G-9 — Copies of Requests for Extensions for 1966 and 1967, dated 11-30-70.

Form 2688 (Rev. Oct. 1967)
U.S. Treasury Department
Internal Revenue Service

Application for Extension of Time to File

U.S. Individual Income Tax Return

(See reverse for filing instructions and return address, be sure to answer all questions.)

Must be filed in DUPLICATE on or before the due date for filing the return. (See instruction 2.)

Please Print or Type

Name of taxpayer: Joseph & Theresa Vispi

Your social security number: 052 12 4162

Number and street or rural route: 16 Berryman Drive

City, town, State, and ZIP code: Snyder, New York 14226

1. An extension of time until June 15th, 1968 is hereby requested in which to file the individual income tax return (Form 1040) of the taxpayer named above for the calendar year 1967 or other taxable year beginning ..... and ending .....

2. State in detail the reason the extension is needed (If more space is needed use the space at the bottom of page 2.): Due to the heavy work load, my accountant, Joseph R. Coppola, will be unable to complete my return by April 15th, 1968.

3. Did you file an individual income tax return on time (including any authorized extension) for each of the 3 years immediately preceding the year for which this extension is requested? ☐ Yes ☐ No
If "NO," list each year during the 3-year period for which a return was not filed on time or within a period covered by an extension, and state the reason. .....

4. Were you required to file a declaration of estimated tax for the year for which this extension is requested? ☐ Yes ☐ No
If "YES," was each required installment payment made on or before its due date? ☐ Yes ☐ No

Signature and Verification

If Prepared by Taxpayer.—Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein are true and correct.

Signature of taxpayer ..... x Joseph R. Vispi x Theresa M. Vispi ..... Date APR 10 1968

If Prepared by Someone Other Than Taxpayer.—Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein are true and correct, that I am authorized by the taxpayer to prepare this application, and that I am:

☐ A member in good standing of the bar of the highest court of (specify jurisdiction) .....

☐ A certified public accountant duly qualified to practice in (specify jurisdiction) .....

☐ A person enrolled to practice before the Internal Revenue Service.

☐ A duly authorized agent holding a power of attorney. The power of attorney need not be submitted unless requested.

☐ A person standing in close personal or business relationship to the taxpayer who is unable to sign this application because of illness, absence, or other good cause. My relationship to the taxpayer and the reasons why the taxpayer is unable to sign this application are .....

APR 25 1968

Buffalo, N.Y.

Signature of preparer other than taxpayer ..... Date .....

The Internal Revenue Service will indicate below whether the extension is granted or denied and return the original to you.

Notice to Applicant—To Be Completed by the Internal Revenue Service

☐ Your application is approved. This form must be attached to your individual income tax return when filed as evidence that the extension was granted. Interest accrues at the rate of 6 percent per year on any tax due for the year from the regular due date of the return until paid.

☐ Your application cannot be considered since it was received in this office after the due date of the return. Your return should be filed without further delay. Please attach this form to the return to explain the delay in filing.

☐ Careful consideration has been given to the reasons and other data given in your application but it has been determined that the extension is not warranted. Your return should be filed by the regular due date or within 10 days of the date of signature of this notice, if the end of such 10-day period is later than the regular due date. The 10-day period granted shall constitute a valid extension of time for filing return for purposes of elections required to be made on timely filed returns. Please attach this form to the return to explain the delay in filing.

☐ Other .....

EXHIBIT D-3 – Activity Report of Mr. Pardi covering dates 4-22-69 to 10-23-69.

AUDIT DIVISION

EXAMINING OFFICER'S ACTIVITY RECORD

DATE ASSIGNED 4/8/69

TAXPAYER J Virgi

PHONE NO. 853-6642

ADDRESS (If different from that on return)

INITIAL CONTACT WITH REPRESENTATIVE — Name: Mr. Virgi; Capacity: Taxpayer; Date: 4/22; Name; Address; Phone No.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED		REMARKS, NOTES, ACTION TAKEN
[illegible]	Mr. Virgi	5	[illegible] later
8/4	Mr. Virgi	2	Mr Virgi came to office [illegible] appointment
9/8	Pardi	2	[illegible]
9/24	Mr Virgi	[illegible]	Mailed 67 & 68 Forms - gave [illegible]
appointments cancelled for: 5/9, 8/4, 8/20, 9/8, 9/18, 10/3 all by Mr. Virgi			
10/3	Mr Virgi		[illegible]
10/15	Mr Virgi	6	Reviewed [illegible] records + [illegible]
10/17	Mr Virgi	2	Re [illegible] made more [illegible] 67 + 68 months as taxpayer will be [illegible]
10/23	[illegible]	3	[illegible] + [illegible]
		21	

D-3 DAEL

17

EXHIBIT D-4 – Activity Report of Mr. Pardi covering dates 10-28-69 to 11-17-70.

EXAMINING OFFICER'S ACTIVITY RECORD

DATE ASSIGNED

TAXPAYER

PHONE NO

ADDRESS (If different from that on return)

INITIAL CONTACT WITH — Name — Capacity — Date

REPRESENTATIVE — Name — Address — Phone No.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED		REMARKS, NOTES, ACTION TAKEN
10/28/69	P.O.D	3½ hrs	Reviewed D Vagi case to interview
1/9/70	P.O.D	5 hrs	Reviewed case w/ D Vagi trying to get in touch w/ Frances
1/16/70	Mrs. Vagi + P.O.D	5 hrs	Original interview - went to Mrs Vagi's
1/15/70	P.O.D	2½	Discussed case with P/A Frances
1/20/70	P.O.D	2 hrs	received & reviewed Vagi's books with P/A Frances
1/21/70	P.O.D	8 hrs	Vagi brought in delinquent returns & related items worked on desk
2/9/70	"	8	Reviewed case with P/A Jacquette discussion with D Vagi
2/13/70		1	Witnessed Vagi signing the record
2/19/70		1	Reviewed returns for mailing
2/20/70	"	7	Quarterly + Case
3/5/70	"	4	received books + discussed with P/A
3/26/70	"	1	Quarterly conference
4/10/70	"	2	worked on records
4/15/70	"	4	"
4/16/70	"	8	worked on desk
4/17/70		8	"
4/20/70		5	"

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE GPO 957-030 NAR FORM 3-133 (3-65)

D-4 Jet Ev

EXHIBIT D-4 — Activity Report of Mr. Pardi covering dates 10-28-69 to 11-17-70.

AUDIT DIVISION

EXAMINING OFFICER'S ACTIVITY RECORD

DATE ASSIGNED

TAXPAYER A & T Vend.

PHONE NO

ADDRESS (If different from that on return)

INITIAL CONTACT WITH Name Capacity Title

REPRESENTATIVE Name Address Phone No.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED		REMARKS, NOTES, ACTION TAKEN
4/27/70	T.O.D.	4	Discussed case with T.O.
4/29/70	"	7	Reviewed additional records
4/30/70	"	5	" "
5/4/70	"	8	interviewed with T.C.V.
5/7/70		5	Office audit
5/11/70	"	3	"
5/18/70	"	6	Visit 3/4 setup and [illegible]
6/25/70	"	4	interview T.C.V.
7/21/70	"	4	" T.C.V.
8/4/70	"	6	worked visit 3/4 w/ Exhibits
8/26/70	"	8	"
9/28/70	"	4	interview T.C.V.
9/[illegible]/70	"	8	worked on check spread
[illegible]/10	"	7	"
"		6	"
"		2	"
15		7	Conference with Mike
16		6	worked on report
17		4	"
18		6	"
[illegible]		5	[illegible]
3[illegible]		4	worked on report

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE GPO 957-030 NAR FORM 3-133 (3-65)

EXHIBIT D-4 — Activity Report of Mr. Pardi covering dates 10-28-69 to 11-17-70.

AUDIT DIVISION

EXAMINING OFFICER'S ACTIVITY RECORD

DATE ASSIGNED

TAXPAYER

PHONE NO

ADDRESS (If different from that on return)

INITIAL CONTACT WITH — Name — Capacity — Date

REPRESENTATIVE — Name — Address — Phone No.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED		REMARKS, NOTES, ACTION TAKEN
[illegible]	P.O.D.	2	[illegible]
10/5	"	8	[illegible]
[illegible]	"	4	[illegible]
10/12 10/13	"	4/5	[illegible]
10/15	P.O.D.	8	[illegible]
10/[illegible]	"	4	Completed, reviewed + submitted case
		232 Hrs	
	Post Review	1	[illegible]
11/16/70	P.O.D.	3½	[illegible]
11/17/70	P.O.D.	2	[illegible]

J.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE — GPO 937-030 — NAR FORM 3-133 (3-65)

EXHIBIT D-5 – Letter from Mr. Pardi to Mr. Vispi, dated 10-6-69.

Address any reply to:

US Treasury Department

District Director

Internal Revenue Service

Date: October 6, 1969

In reply refer to: AU:F:19:DP

Mr. Joseph Vispi
16 Berryman Drive
Snyder, New York

Dear Mr. Vispi:

I find it impossible to hold open the audit of your 1965 and 1966 tax returns any longer. If substantiation is not provided for the following matters by October 16, 1969 I will find it necessary to disallow these deductions and assess the necessary tax on them. If a meeting is arranged for between now and the 16th, I would be interested in seeing your 1967 and 1968 tax returns. The items needing substantiation for 1965 and 1966 are as follows:

1965 and 1966 - Contributions
" " " - Dues and Meetings
" " " - Typing Expenses
" " " - New York State Job Expenses
" " " - Auto Expenses
" " " - Promotional Expenses

'f you care to contact me I can be reached at 842-3681 by 'phone or at e Field Audit Division of the Internal Revenue Service, 34 W. Mohawk St., uffalo, New York, for an appointment.

Very truly yours,

Dominick Pardi

Dominick Pardi

D-5 ff EV

Affidavit of Service

Records and Briefs
For State and Federal Courts
Established 1881

313 Montgomery Street
Syracuse, New York 13202
(315) 422-4805

Russell D. Hay/President
Everett J. Rea/General Manager

Spaulding Law Printing

July 15, 1976

Re: **United States of America v. Joseph C. Vispi,**

State of New York)
County of Onondaga) ss.:
City of Syracuse)

JOHNSON D. HAY,
Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **Ohlin, Damon, Morey, Sawyer & Moot,**

Attorney(s) for **Appellant, Joseph C. Vispi,**

(x)he personally served **one (1) copy** of the printed ☐ Record ☐ Brief ☒ Appendix of the above entitled case addressed to:

UNITED STATES ATTORNEY
For the Western District of New York
233 United States Courthouse
Rochester, New York 14614
Att: Richard J. Arcara, Esq.

☐ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York.

☒ By hand delivery **on July 15, 1976.**

Johnson D. Hay
JOHNSON D. HAY

Sworn to before me this **15th** day of **July, 1976.**

Donald C. Jeunin
Notary Public
Commissioner of Deeds

cc: Ohlin, Damon, Morey, Sawyer & Moot, Esqs.